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CURRENT TOPICS

The Administration of Justice Bill

A GREAT many interesting reforms are proposed in the Bill introduced by the LORD CHANCELLOR in the House of Lords on 27th October under the title of the Administration of Justice Bill. Although, as the short title implies, the bulk of the proposals are administrative in nature, relating to such matters as the appointment of official referees and county court judges, deputy and assistant district registrars, deputy county court judges and assistant registrars, there are nevertheless provisions affecting a variety of matters which can be classified as substantive law. Part IV of the Bill, for instance, deals with execution in the light of the recommendations of the Evershed Committee. It proposes to abolish the writ of *elegit* and to repeal those provisions of s. 195 of the Law of Property Act, 1925, under which a judgment entered up in the Supreme Court operates as a charge on all the land of the judgment debtor. Instead, both the High Court and any county court are empowered to impose a charge on specified land of the judgment debtor for payment of the amount due, the charge having the same effect as an equitable charge created by the debtor and being registrable in the Land Registry. Another clause empowers the High Court and the county court to appoint a receiver by way of equitable execution of legal estates as well as equitable interests in land, and it is also proposed to make deposit accounts, as well as current accounts, subject to attachment. Part III of the Bill is concerned with county courts and again gives effect to recommendations of the Evershed Committee, largely in connection with execution, powers of registrars, and similar matters. Taken together with the County Courts Act, 1955, and the forthcoming introduction of legal aid in county courts, it may be said that the whole jurisdiction and procedure therein has received a thorough-going and exhaustive overhaul. Space precludes us from mentioning much else of interest in the Bill, and detailed examination of its provisions must be left for later issues.

Committee of Inquiry on Administrative Tribunals

FOLLOWING the Crichel Down case, the promised committee of inquiry into the working of administrative tribunals has been appointed by the LORD CHANCELLOR. It has a strong membership, including three solicitors: Sir GEOFFREY STUART KING, Mr. H. WENTWORTH PRITCHARD, and LORD SILKIN, and the chairman will be Sir OLIVER FRANKS. Other lawyer members are Lord Justice PARKER, Mr. RODERIC BOWEN, Q.C., Mr. DOUGLAS JOHNSTON, Q.C., and Mr. CHARLES RUSSELL, Q.C. The terms of reference are "to consider and make recommendations on (*a*) the constitution and working of tribunals other than the ordinary courts of law, constituted under any Act of Parliament by a Minister of the Crown or for the purposes of a Minister's functions; (*b*) the working of such administrative procedures as include the holding of an inquiry or hearing by or on behalf of a Minister on an appeal or as the result of objections or representations, and in particular the procedure for the compulsory purchase of land." The secretary of the committee is Mr. J. LITTLEWOOD, of H.M. Treasury, and its work will start as soon as possible.

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Restriction of Vexatious Actions

In writing of procedural matters our contributors have more than once had occasion to refer to the jurisdiction of the High Court to strike out a particular pleading or part of it, or even to shut out a whole action or an entire defence, either on grounds detailed in the rules or for reasons which the court deems sufficient, having regard to the inherent power which it undoubtedly possesses to prevent its own exploitation for ends which are "frivolous" or "vexatious." These adjectives are to be found in Ord. 25, r. 4, but, as the editors of the Annual Practice point out, in applying that rule the court regards the question before it as for practical purposes concluded by what appears on the face of the pleadings: the inherent jurisdiction, on the other hand, takes account of all the facts of the case, and any relevant facts which are not apparent from the pleadings may be put before the court by affidavit. Nevertheless, it is obvious that the court can, in ordinary circumstances, only deal with one action at a time. If a person persisted in instituting proceedings on no reasonable ground, the piecemeal remedy of staying the actions one by one would hardly be a satisfactory way of stemming the abuse. This was evidently the train of thought behind the Vexatious Actions Act, 1896, which is now represented by s. 51 of the Judicature Act, 1925. Under that section recently the Divisional Court, in the words of *The Times*, "ordered a litigant to stop litigating." More exactly in *Re Barrett*, on 20th October, the court, on the motion of the Attorney-General, ordered that no legal proceedings should be instituted in any court by the respondent, Mr. Stanley Arthur Barrett, without the leave of the High Court.

Town Planning Maps

Solicitors who receive instructions to appear at town planning inquiries will be interested in an explanatory text which has been issued by the Ministry of Local Government and the Department of Health for Scotland to assist in the interpretation of the "local accessibility" map published in April this year. (Planning Maps—Explanatory Texts. No. 6: Local Accessibility. H.M. Stationery Office, price 9d.) This map is the latest addition to the series of "ten mile" planning maps (on the scale of 1/625,000). It is based on an analysis of bus services and shows the areas or "hinterlands" whose populations look to some particular town as their local shopping or market centre for those needs and services which are too complex to be met in villages, yet not so specialised that recourse to a large regional capital is necessary. Coloured circles show the estimated populations of centres and hinterlands. The map is available from the usual Ordnance Survey agents in two sheets (Sheet 1, Scotland and Northern England; Sheet 2, the remainder of England and Wales), price 5s. per sheet. The explanatory text points out that there is no necessary correlation between the size of a town and the population which it serves. All aspects of the "overspill" problem and their expansion were the subject of discussion between the Minister and representatives of the larger cities on 18th October, 1955. The relief of congestion in the larger built-up areas put a special limit on planning in those areas, the nature and extent of which it is important for planners and advocates to understand. An important message of the map and of the accompanying text is that for very many purposes towns should not be considered apart from the territories they serve. The population and nature of the hinterland will influence, for example, the size of the town shopping centre and car-parking accommodation. The Ministry states that for this reason the map is already proving useful to administrators in both central and local government, to town and country planners, and to experts in the field of advertising and market research.

Planning Inquiries

In his Presidential Address to the Town Planning Institute on 3rd November, 1955, Mr. Desmond Heap, LL.M., dealt, among other matters, with something which he told his audience that they would expect to hear about from a lawyer, namely, planning inquiries. It was important, he said, for two reasons: firstly, because the number of such inquiries had increased from 4,253 in 1951 to 7,061 in 1954, and would tend to grow as a result of the 1954 Act, as an applicant for planning provision has now no more to lose, but considerably more to gain, by appealing against a refusal of permission. Secondly, the inquiries were "the shop window of planning to hordes of people" and they should, therefore, inspire public confidence. He said that no one should at any stage be encouraged to discount the wisdom of being expertly advised, as the note on advice in the appeal form T.C.P. 201/47 might be interpreted to mean. The *onus probandi*, he added, should be shifted to the local authority at such inquiries, and the presumption should be in favour of granting permission. The local authority would thereby have the first word, but the applicant would not lose by losing the right to the last word, because he would know, before he opened his case, something of the policy background with which he had to contend. Departmental views should be put forward by departmental witnesses, who should be subject to cross-examination. Better efforts should be made, he said, to acquaint applicants at all stages with what is the national policy applying to his case. Informality had gone far enough and the time had come to introduce rules of procedure to settle the points of argument in advance. Although his mind had fluctuated on the subject, publication of the Minister's report with reasons for his decision now seemed to him necessary to stimulate public confidence.

De-control

We suggested in last week's issue that gradual de-control of dwelling-houses subject to the Rent Acts, applied successfully before the war, could be adopted ten years after the war. By a coincidence, *The Times* of 28th October, commenting on Mr. Duncan Sandys's statement of the previous day that the Government would review the Rent Acts and announce their conclusions "in due course," said: "This is all very leisurely . . . Why cannot the upper third of private dwellings be de-controlled forthwith?" This is something which can be done at once. It would produce something more like a balance in our economy, where rents are subsidised at the expense of a limited class, and as everyone knows are, at least as often as not, subsidised for the benefit of the wrong people.

Articled Clerks

A strong attack on "the articled clerk system," as he called it, was made in a letter in the *Daily Telegraph* of 20th October, 1955, from Mr. W. F. Whelan. "To-day," he wrote, "a solicitor does not employ paid labour because of the high cost, and so exploits the articled clerk system as a means of cheap labour." It would be as difficult to support this statement with facts and figures as it is easy to prove the contrary. It is not surprising to find that Mr. Whelan seeks to support it with more general and, to those who know the facts, palpably untrue propositions, such as "nowadays the solicitor teaches his clerk very little. All that is done at the Law School." In fact, the majority of solicitors take pains to educate their articled clerks in the practice of the law, which, as the teachers in the law schools are first to admit, is additional

to and different from the subject of their lectures. "The unpaid business is a relic of the days when articled clerks did no work in their principals' offices," is another inaccuracy. There never were such days. It is one of the disadvantages of completely free speech that one has to listen to and refute a great deal of nonsense. Every solicitor and well-informed person would, however, need more persuasive argument than this letter contains to prove to them that the system of articles is not what it has always been, one of the indispensable features of legal education in this country.

Trade Practices Tribunal

IN representations submitted to the Board of Trade on 24th October, following the recent Report of the Monopolies Commission, the National Union of Manufacturers have suggested that proceedings concerning alleged restrictive practices before the tribunal which it is proposed to set up should be initiated by an authority other than the tribunal itself, and that it should not be the tribunal, but another authority, which should be responsible for proving an agreement to be contrary to public policy. They also recommend that the onus of proof of this should be on the party asserting it, that there should be a right of cross-examination, and that the tribunal should publish its findings of fact and reasons for them. The evidence, they say, should be heard in open court, subject to proceedings being *in camera* where the national interest is affected, and both sides should have a right to appeal to the Court of Appeal. It is further recommended that the tribunal should consist of a judge of the High Court, that the authority alleging a restrictive agreement should be represented by a law officer, and that the party defending the agreement should be allowed counsel. In deciding what is and what is not contrary to public policy, the tribunal should have regard to existing law and, in due course, to its own decisions.

Ordinary Shares

A PRESENT trend in company practice which may call for an amendment to the Companies Act was described in a letter from Mr. E. BEDDINGTON-BEHRENS in *The Times* of 24th October. The procedure, he wrote, had evolved in the following way. The company's shares are quoted on the Stock Exchange in an early stage of its development and then large issues of bonus shares are made from time to time in the form of "A" shares carrying no votes. The "A" shares belonging to the original owners of the company are gradually sold to the public. Then additional businesses are acquired by offering the owners further "A" shares in exchange. In course of time the descendants of the original founders, by holding a controlling interest in the voting shares, may not be the right people to manage the business; and shareholders owning millions of pounds of voteless "A" shares will be powerless to remedy the situation. This is a matter which must be inquired into sooner or later, for many people still think that the tendency to divorce the ownership of capital from all responsibility can only be productive of evil consequences.

Crime and the Welfare State

LORD PAKENHAM'S address on "Crime" on 20th October to the annual general meeting of the Magistrates' Association contained a suggestion which, if acted on, might go a long way towards the solution of one of the direst problems of the present day. His interest in crime, he said, dated from 1st December, 1952, when he read an article in *The Times* which left him with a strong impression that crime had been increasing for twenty years at a time when the Welfare State was being established, the condition of the poor much improved, and extreme want being abolished. The first step, he said, was to improve the Government information on the movement of crime and insist on a unified return from the police districts. The lecturer stressed the damage done by broken homes and lack of mother love, and their recently proved statistical connection with crime. Such knowledge had, he said, brought with it a fresh understanding of the ancient Christian instruction "Judge not, that ye be not judged." Home influence and mother love are not comprehended within the national health service or any other nation-wide welfare service, and we agree that it is time to transfer some emphasis to private welfare. Lord Pakenham concluded: "Once we see delinquents as people who may be receiving justice, but may equally be receiving gross injustice at our hands, we shall approach each individual prisoner on the assumption that it is at least possible that he ought not to be there at all; we shall recognise, I should hope, a new and burning obligation to make sure that the penalty imposed on prisoners, while it cannot, of course, be relieved of all deterrent character, is organised and inspired to aim at their ultimate benefit."

The Copyright Bill

MANY amendments and re-codification of the law of copyright are proposed in the Copyright Bill, introduced in the House of Lords by Lord Mancroft on 26th October. Its purposes include the implementation of most of the recommendations in the Report of the Copyright Committee (Cmd. 8662) and the making of the necessary changes in the law to enable the United Kingdom to ratify the Universal Copyright Convention (Cmd. 8912). Provisions to cover the problems raised by developments such as television are included. We hope to examine the Bill in more detail in a later issue.

Sale of Manors

TWENTY-NINE lordships of manors, in Radnorshire, Yorkshire, Surrey, Hertfordshire, Lincolnshire, Norfolk, Suffolk, Essex, Oxfordshire, Berkshire and Hampshire are to be offered for sale by auction in London on 7th December. The auctioneers are Messrs. Strutt and Parker Lofts and Warner, of London, and Messrs. C. M. Stanford and Son, of Colchester. Among the rights of purchasers specified by the particulars of sale is the right to be called "lord of the manor," which carries with it the right to inspect free of charge any manorial records which may for some reason or other not be in possession of the present lords, whether they are in the hands of a record office, library, or some individual. A purchaser may also own such commons, greens and wastes as may still form part of the manor, and he may be entitled to any income payable by the appropriate authorities for wayleaves in respect of telegraph, telephone and electricity poles and kiosks erected thereon under agreements in force at the date of completion of purchase. In addition, he obtains delivery of all the manorial records specified in the particulars of each lot of the sale, which for many may be the prime interest of the purchase. It is pointed out, however, that manorial records are under the "charge and superintendence" of the Master of the Rolls and should not be exported. Seven of the manors are the remainder of the original Beaumont collection offered at auction in London in September last year. The collection was begun by Joseph Beaumont, a solicitor, of Coggeshall, Essex, who died in 1889, and was continued by his son, George Frederick Beaumont, who died in 1928. A further eighteen of the lordships are held separately by Mr. JOHN L. BEAUMONT, a London solicitor and grandson of the original collector, and four by individuals outside the family.

DOCUMENTS EXECUTED ABROAD

WHEN writing to clients with a deed for execution I have a more or less invariable formula: "Please sign the deed where we have marked your name in pencil, in the presence of an unrelated witness who should sign his/her name, address and occupation where indicated; please do not date the deed." My secretary has grown so accustomed to the phrase that she merely writes a couple of wiggles in her shorthand book that look like elephant's ears, and anyone overhearing my dictation might hear the following: "Dear Mrs. Smith, We shall shortly be completing this matter and we therefore enclose the conveyance for execution. Elephant's ears. Yours faithfully." It takes little thought, but occasional problems can crop up.

Many readers will remember from their law school days that a witness is not necessarily required for the execution of a conveyance, though one is required for the execution of a transfer under the Land Transfer Acts. That is all straightforward, and no question arises, even when one's client can only be reached in, say, the South of France or in Sicily. No one will worry that the final signature to the document looks as if it were written by a ten-year old; he is a good witness.

But difficulties do arise on the execution, usually in connection with documents where swearing or declaring are necessary, and the most common instance of these is the power of attorney that has to be filed at the Central Office. Unless the power is to be handed over on completion of the sale, it must be filed and with it must be filed "an affidavit or statutory declaration sworn or made by the attesting witness or some other person in whose presence the instrument was executed . . ." (R.S.C., Ord. 61A, r. 5 (*a*)). If the witness can appear before an English commissioner for oaths, ambassador or other consular officer or local High Court judge well and good. The alternative is that the witness or the donor of the power must appear before a notary. If the donor can do so, it will obviate the necessity to bring in a witness at all, as the notary is a good witness. He will execute a certificate of due execution; he will send the power, and certificate, to his Minister of the Interior who will authenticate his signature; the Minister then sends the power, the certificate, and the authentication to the Minister of Foreign Affairs who legalises the authentication; and from there it must go to the British consulate or embassy to be passed; the Central Office can then accept it. Some countries, however, do permit their notaries to supply copies of their signatures direct to the consulate or embassy, thus avoiding the necessity of reference to the Ministries. The Foreign Office has not been able to inform me of the practice in individual countries, though the full formula certainly applies in Austria.

This procedure is inevitably accompanied by a series of fees, so that it is readily appreciated that it is not particularly quick or cheap. We cannot entirely congratulate ourselves for being less formal, for although most consulates here accept the notaries' signatures, some do not. The Soviet Union, Paraguay and El Salvador are among those who want Home Office authentication (Room 229, Home Office, Whitehall) and Foreign Office approval (Legalisation Section, Room 530, Clive House, Petty France, S.W.1) before they will themselves legalise a document. The Foreign Office fee is 14s., though there is no charge at the Home Office. The consular fees vary widely, to my knowledge the lowest being Sweden at 6s. and the highest Bolivia at £8 10s.

The swearing of probate papers out of the jurisdiction follows the same formalities as the affidavit with the power of attorney; however, it is more usual for the foreign executor or administrator to execute a short power of attorney in favour of someone in this country; and such power, if it follows the Non-Contentious Probate Rules, need only have one unqualified witness. The power is deposited at the Probate Registry concerned, and is not liable to stamp duty.

Certain other documents require a special attestation, such as absolute bills of sale under the Bills of Sale Act, 1878. These must have a solicitor of the Supreme Court as a witness. It would seem that the only alternative is to appoint an attorney to execute the bill, and possibly the ensuing delay might well defeat the object of the bill.

In many countries a witness must be at least twenty-one to be competent; the formalities of execution should follow those required by the law of the country where the deed is to be used, though an English company can only execute a deed in the method provided for by English law; it is here that the certificate of the notary "that such execution is binding upon the company by English law" is useful.

The final and most complicated part of this subject is wills, and the solicitor whose client is a foreign national or English domiciled abroad must be very wary. A single example, that of the Netherlands, shows the hidden dangers there may be; for the will of a Dutch national will only be recognised in the Netherlands if passed before a notary in the Netherlands or before a specially authorised Netherlands consular representative. The oldest legal maxim would appear to be the only safe advice to the solicitor: don't do it.

N. P.

A Conveyancer's Diary

PURCHASER'S REMEDIES WHEN VENDOR FAILS TO COMPLETE—II

So far this inquiry into the remedies of a purchaser under a contract for the sale of land has proceeded on the basis that an action against the vendor for specific performance of the contract would lead to delays which the purchaser cannot accept. In most cases this is so, but the occasion does arise when some delay is acceptable if at the end of it the purchaser will obtain what he has contracted to purchase, and there are, or may be, remedies in the courts available to the purchaser, the pursuit of which does not involve the delay of fighting a full-scale action for specific performance to a conclusion. These remedies have been devised particularly to meet the case when there is no real defence to an action for specific performance, or indeed any kind of action based on the vendor's breach of his obligations under the contract.

First there is Order 14A. Rule 1 (1) of this order now provides that in an action in the Chancery Division commenced by a writ indorsed with a claim for specific performance of an agreement, whether in writing or not, for the sale or purchase of property, with or without alternative claims for damages, for rescission or for the forfeiture or return of the deposit, the plaintiff may (whether the defendant has appeared or not) on affidavit made by himself or by any

other person who can swear positively to the facts, verifying the cause of action and stating that in his belief there is no defence to the action, apply for judgment, and the court or judge may thereupon give judgment unless the defendant satisfies the court or judge that he has a good defence to the action on the merits, or discloses facts sufficient to entitle him to defend. Order 14A was recently amended in two respects; it now applies to contracts not in writing as well as to contracts in writing, and the procedure is available whether the defendant has appeared or not (before this amendment, if the defendant did not appear, the plaintiff's remedy was to move for judgment). An application under this procedure is made by summons returnable not less than four clear days after service of the writ. If the vendor's failure to complete in accordance with his contract (that is to say, bearing in mind the decision in *Smith* v. *Hamilton* to which I referred last week) is due solely to the fact that he has not been able to provide himself with some other accommodation in the time which he had hoped would be sufficient for this purpose, this procedure is both quick and cheap. The delay between service of a summons under Order 14A and the appointment before the master depends largely on the state of business in the chambers of the Chancery Division, and at present should not be considerable. If, as is assumed, there is no defence to the action, he master will then adjourn the summons to the judge to make the order, and the delay involved in this adjournm nt should not at present ever exceed ten days. Provided, therefore, that the plaintiff's tackle is in order from the beginning and the matter is pursued with the urgency which is due to applications under a procedure specially devised to reduce delays to the minimum, an order under this procedure should, in the present state of business in the Chancery Division, be obtainable within three to four weeks of the date of service of the writ.

Under this procedure full minutes of the judgment sought by the plaintiff are set out in an annexure to the summons, and the plaintiff must therefore decide from the outset how much further time the vendor should be given to complete. Assuming a delay of a month or more (*Smith* v. *Hamilton* again) since the date fixed for completion at the date of the service of the writ, another ten days from the date of the order should be ample. If after order the vendor is in default thereunder, the purchasers can enforce it summarily under Ord. 42, r. 30.

This procedure is worth bearing in mind if the purchaser can accept some delay and is anxious to go on with the transaction. But if it is decided to make use of it, it must be impressed on all concerned that every step should be taken with the utmost expedition. It is unfortunately too often true that when complaints are made of the delays involved in litigation, examination of the complaints shows that the trouble is due quite as much to failure to take the requisite steps in time as to the defects (if indeed they are such) of the machinery which the rules provide.

The new procedure for specially indorsing writs in the Chancery Division under Ord. 3, r. 6, which was introduced early this year as the result of a recommendation of the Evershed Committee, has no advantages in the kind of case with which these articles are concerned over the procedure under Ord. 14A. It cannot compare with the Ord. 14A procedure for speed. But even under Ord. 14A the best that the courts can do is to produce an order for the completion of the contract (bearing in mind *Smith* v. *Hamilton*) some seven or eight weeks after the date fixed for completion. Anything better than that can only be obtained by adopting a form of contract different from that in ordinary use to-day. Moreover, although the Ord. 14A procedure allows of a claim for damages to be joined with a claim for specific performance, the practice of the Chancery Division normally involves an inquiry as to damages separate from the main hearing of the application for an order under these rules, which leads to more trouble for the purchaser; and when he gets his damages assessed, these will probably only be assessed to the date of issue of the writ, and separate proceedings will be necessary if further damage has been suffered after that date. Whichever way this problem is looked at, the only really effective way of providing the purchaser with a speedy remedy is to confer it on him by contract.

There are many different common-form contracts in use, and each one will present its own particular problems, but the suggestions which follow should make it possible to adapt any form so as to achieve the object in view—putting the purchaser in roughly the same position *vis-à-vis* his vendor as the vendor now usually occupies *vis-à-vis* his purchaser.

The principal amendment necessary will be that which makes time of the essence so far as completion is concerned. It is, therefore, first of all necessary to work out a realistic date for completion: so many days for delivery of the abstract, so many for requisitions and replies respectively, so many for submission of a draft contract and its consideration by the purchaser. In some forms time is made of the essence for some at least of these steps, but very little attention is paid to this provision; if time is to be made of the essence for completion, it is essential that each step is carried out within the requisite time, in relation to which time must also be of the essence. The times for various steps allowed by the common forms are not, I think, always long enough: time should always be allowed sufficient for the party concerned to place a case before counsel and obtain counsel's views, and on this footing a fortnight is the minimum. The amendment of common form conditions of sale to provide reasonable time for each necessary step and, where that is not already done, to make time of the essence in relation thereto, presents no problems to a purchaser's solicitor.

Stopping at this point, the position of the vendor under a contract with a date for completion in relation to which time is of the essence is not unreasonable, if the date fixed is a reasonable one, and if the contract contains a provision (which the printed conditions commonly in use always do) to the effect that if the purchaser insists on an objection which the vendor is unable or unwilling on reasonable grounds to remove, the vendor may by notice rescind the contract, etc. Except in the case of a registered title, and even in that case sometimes, a vendor may often not realise a particular defect in his title until it is pointed out to him on behalf of a purchaser; but this kind of condition enables the vendor to withdraw before the date for completion is past and before, therefore, he is in breach. I can see no hardship in this. On the other hand, if the purchaser fails to complete on the day fixed, then the vendor will be able to rescind the contract and resell the property pursuantly to the common conditions to that effect without the necessity of serving any notice upon the purchaser making time of the essence of the contract. I said last week that this condition was remodelled after, and as a result of, the decision in *Smith* v. *Hamilton*. The amendments to the form of clause in use before that decision incorporated in current editions of printed conditions of sale are unnecessary and inept if time is originally of the essence for purposes of completion, and any such amendments must therefore be deleted; this is

easily done by restoring the wording of the condition to its pre-*Smith* v. *Hamilton* form.

Lastly, a completely new condition should be added immediately after the condition giving the vendor a right to rescind and resell on the purchaser's default. This may conveniently be headed "Purchaser's rights on vendor's default," and it should provide that if the vendor should neglect or fail to complete the sale in accordance with the provisions of the contract, the purchaser may by written notice rescind the contract, and thereupon the vendor must immediately return to the purchaser his deposit, or, if it is in the hands of a stakeholder, release it. This condition may then go on to provide that in the event of the purchaser rescinding the contract pursuant to the preceding provision any loss suffered by the purchaser must immediately be paid by the vendor or, if not so paid, that it shall become recoverable as liquidated damages, such loss to include the purchaser's costs actually incurred in connection with the contract and the investigation of title, and also the reasonable expense actually incurred by him of accommodation for himself and members of his family for a stipulated period (say, two months) so far as such expense exceeds the normal expense of such accommodation.

There will doubtless be resistance to any attempt to modify in the purchaser's favour conditions which have for so long been accepted as normal and reasonable in their unamended form. To what extent it will be possible to overcome such resistance will depend in the last resort on the purchaser's willingness to break off negotiations and start his search for a suitable property afresh. It may be that concessions can be made to the vendor, or rather the vendor's advisers, for example, by deletion of the suggested condition relating to the purchaser's damages. But if a stand is now and then made on a purchaser's behalf, the practice of conveyancers in this respect is bound to be affected, I think generally to its advantage. But (and this may be the crux of the matter) it is not enough merely to alter forms; if time is made of the essence, every operation in connection with the transaction must be treated as an urgent matter, and the time-table of the conveyancing branch of the office must be adapted accordingly. How many practitioners, in these days of staff difficulties, are prepared to see to that? "A B C"

Landlord and Tenant Notebook

TENANT AT WILL

Wheeler v. *Mercer*, in which the Court of Appeal decided that Pt. II of the Landlord and Tenant Act, 1954, applied to a tenancy at will, was reported in *The Times* of 25th October. It is hoped that a full report will be published in due course; in the meantime and by way of a prelude to discussing the reasoning adopted, it may be useful to examine the characteristics of the relationship known as "tenancy at will."

The Law of Property Act, 1925, begins: "The only estates in land which are capable of subsisting or being conveyed or created at law are—(*a*) An estate in fee simple absolute in possession; (*b*) A term of years absolute" (s. 1 (1)). It is clear, then, that if a tenancy at will is to rank as an estate in land at law, it must answer to the description "term of years absolute." This expression is defined in s. 205 (1) (xxvii): "A term of years (taking effect either in possession or in reversion whether or not at a rent) with or without impeachment for waste, subject or not to another legal estate, and either certain or liable to determination by notice, re-entry, operation of law, or by provision for cesser on redemption, or in any other event (other than the dropping of a life, or the determination of a determinable life interest) . . ."

Coke-upon-Littleton describes "Tenant for terme of yeares" in Ch. VII of Book I, consisting of ten sections. Chapter VIII then deals with the tenant at will in some five sections, and also mentions, in a note to s. 72, the relationship known as tenancy at sufferance. As this relationship was referred to in the course of *Wheeler* v. *Mercer*, what the note says is worth citing: "There is a great diversity between a tenant at will, and a tenant at sufferance; for tenant at will is alwaies by right, and tenant at sufferance entreth by a lawfull lease, and holdeth over by wrong. A tenant at sufferance is he that at the first came in by lawfull demise, and after his estate ended continueth the possession and wrongfully holdeth over." Later: "The law is that if a man maketh a lease at will and dieth, now is the will determined, and if the lessee continueth in possession he is tenant at sufferance." The relationship is also mentioned in Ch. VIII of Book III, which chapter deals with Releases, in a note on ss. 460 and 461; by them "is to be observed a diversity between a Tenant at will and a Tenant at sufferance, for a release to a Tenant at will is good because between them there is a possession with a privity, but a Release to a Tenant at sufferance is void because he hath a possession without privity"; also "a man of his owne head occupieth Lands of Tenements" in s. 461 is said to indicate a "Tenant at sufferance, viz., where a man commeth to the possession first lawfully, and holdeth over." From which one may reasonably conclude that while Coke considered that a tenant at sufferance was not entitled to an estate in law and was essentially a trespasser, he rather preferred a guest who outstayed his welcome to a gate-crasher.

But when describing a tenancy at will, Coke emphasises that the expression is used because the tenant has no certain or sure estate. He does not, therefore, suggest that the tenant at will has no estate.

Nowhere does Coke mention a periodic tenancy or a notice to quit. How periodic tenancies developed can be seen from a study of Cole on Ejectment; it is well established that they were originally regarded as a modified variety of tenancy at will, the will not being, as it were, an unbridled one but having been curbed by the requirement of so much notice. In *Parker d. Walker* v. *Constable* (1769), 3 Wils. K.B. 25, a yearly tenancy, as it would be called to-day, was judicially referred to as a tenancy at will.

Of other authorities, it may be said that there are many to illustrate how a tenancy at will may be created and how it may come to an end; but what the rights and liabilities of the parties are while it endures has not occasioned much litigation calling for a report, though a good deal can be indirectly gleaned from the other authorities.

It is, of course, well established that a tenancy at will may be created without the use of express words; of the numerous decisions on this point, those most likely to bear on the scope of Landlord and Tenant Act, 1954, Pt. II, questions are *Doe d. Stanway* v. *Rock* (1842), Car. & M. 549, *Coggan* v. *Warricker* (1852), 3 Car. & Kir. 40, and *Meye* v. *Electric Transmission, Ltd.* [1942] Ch. 290. It can be safely stated that there must be agreement: *Ley* v. *Peter* (1858), 3 H. & N. 101, in which case Bramwell, B., said that there must be an

affirmative consent, not a mere negative or silent consent (letter ignored: "when did the silence have the effect?"); but *Doe d. Hull* v. *Wood* (1845), 14 M. & W. 682, warrants the opinion that consent, or at least assent, will be inferred from "simple permission." *Simkin* v. *Ashurst* (1834), 1 Cr. M. & R. 261, may be useful as showing where the line will be drawn; a sub-tenant who remained in possession with the ex-superior landlord's consent was held to be a tenant at sufferance only; but the decisive factor was that terms were discussed but no agreement reached at an interview between the parties.

Authorities on determination show that something must happen to show one party that the other no longer wishes the tenancy at will to continue; and there are, as one may expect, many illustrations of what will be interpreted as a demand of possession by the landlord. "Some act inconsistent with the will that the tenancy should continue" sounds somewhat question-begging; but the authorities on the effect of alienation are, I believe, most likely to serve the purpose of indirectly indicating the true nature of the relationship, and consequently informing us of the position of the parties while it exists.

It has been said that a disposal of his interest by either party will determine the tenancy at will because the relationship is a personal one. Close investigation shows, however, that the proposition should be qualified.

Thus, while such an event as a feoffment with livery of seisin (made on the land) has been held to determine the tenancy, though the tenant was absent: *Ball* v. *Cullimore* (1835), 2 C.M. & R. 120 (in which Parke, B., said: "Any act of that kind determines the will whether the tenant knows it or not"), assignment or conveyance of the reversion will not have this effect, unless and until the tenant is made aware of the transaction: Parke, B., said as much in *Doe d. Davies* v. *Thomas* (1851), 6 Exch. 854 ("takes place behind the back of the tenant"). The principle was expressed by Coke in a note to s. 68: "The lessor may by actuall entry into the ground determine his will in the absence of the lessee, but by words spoken from the ground the will is not determined until the lessee hath notice" (the learned writer goes on to point out that an attorney cannot be discharged without being told). Likewise, and the decisions concerned might prove important in Landlord and Tenant Act, 1954, Pt. II, cases, it has been said and held that assigning or under-letting by the tenant will determine the tenancy: that is to say, *Pinkhorn* v. *Souster* (1853), 8 Exch. 763, showed that a landlord would not be bound by the assignment till he had notice of it, and in *Birch* v. *Wright* (1786), 1 Term Rep. 378, Ashurst, J., rather assumed that the grant of a (sub-)lease would have this effect. But a Privy Council decision, *Day* v. *Day* (1871), L.R. 3 P.C. 751, is of potential importance here, for it warrants the proposition that the terms of the tenancy may impliedly authorise alienation, regard being had to character and circumstances—in that case an Australian boat-builder had retired, leaving his son in occupation of premises; it was held that some sub-letting of *parts*, beneficial to the property, was "conformable to" the will. For here we are reminded of one of the comparatively few authorities on the terms of a tenancy at will: *Morgan* v. *Harrison* [1907] 2 Ch. 137 adopted the principle that, when such a tenancy is created on holding over, the terms of the expired tenancy apply as far as applicable, in so far as there is no evidence of any contrary intention. The tenancy at will in that case was expressly created, and the term held to be a feature was an arbitration clause; but the decision might provide some support for an argument that where alienation was contemplated by the original tenancy, the relevant provisions would be imported into the tenancy at will: I suggest, however, that where, as is usual, the right to assign or sub-let is restricted, there is no such implied authority as was found to exist in the case of *Day* v. *Day*.

Lastly, involuntary alienation should be considered. *Doe d. Davies* v. *Thomas*, *supra*, was in fact a case in which the landlord at will became bankrupt; but examples afforded by the death of a party are likely to provide better illustration. It will be found that, while one might consider that if anything would effect a determination of a state of affairs dependent on volition and the consent of both parties, the death of one of them would, the authorities cannot be completely reconciled. Eldon, L.C., said in *James* v. *Dean* (1805), 11 Ves. 383, that the *general* doctrine was that the death of either party determined the will; among more recent decisions, *Scobie* v. *Collins* [1895] 1 Q.B. 375 supports this view; but, in between, we had, in *Morton* v. *Woods* (1869), L.R. 4 Q.B. 293, a pronouncement by Kelly, C.B., to the effect that the tenancy might continue till the landlord's successor in title indicated his intention to discontinue it. Likewise, while in *Doe d. Stanway* v. *Rock* (1842), Car. & M. 549, Patterson, J., unhesitatingly decided that the death of the tenant automatically determined the tenancy, yet in *Re Manser; Killick* v. *Manser* [1910] W.N. 61 the administratrix of a deceased tenant at will was held to hold on behalf of the estate.

Despite such conflicts, it seems right to regard a tenancy at will, while it lasts, as a term of years and an estate in land. It does not follow that such a tenancy, the premises being business premises, falls within the scope of Pt. II of the Landlord and Tenant Act, 1954; how the Court of Appeal came to decide that it did will be considered in a later article. R. B.

HERE AND THERE

HAPPY RELEASE

FIRST of all let's finish a story which I began a fortnight ago, the final frustration of that spontaneous experiment in penal science, the democratically conducted gaol of Pont l'Eveque in Normandy. You may remember that under the benevolent, if somewhat alcoholic, rule of the warden, Fernand Bilea, the convicts put into practice all the most approved principles of the school of rehabilitation without tears, while they studied the arts of self-help, self-government and self determination. Meanwhile the warden himself practised an admirable self-effacement, lest an obtrusive and intrusive show of authority should mar the psychological benefits of his régime: he spent most of his day at the café over the way drinking to the dawn of the new order in prison life. The prisoner's day might begin with breakfast in bed, a comforting and perhaps even a necessary indulgence if the inmates had spent a jolly night giving a party to wives and girl friends. Deauville, four miles off, with its racecourse and night clubs, was not beyond the range of a day return ticket of leave. The organisation of the trips there imposed no strain on the warden or drain on his time since there were talented prisoners able and willing to take over the clerical work of the establishment. One speaks of a "happy ship." This was a "happy gaol," since for three whole years life there went on perfectly smoothly and the vast majority of the prisoners settled down in it as in an agreeable residential club—of their own free

will, mark you, since anyone who chose to walk out was formally entered in the register by the efficient clerical staff as "discharged." In the end, you remember, authority, always jealous of unauthorised happiness and ever ready to stone a prophet, descended on poor Monsieur Bilea, closed his gaol and sentenced him to three years in a conventionally penal penitentiary. But that was only a preliminary. Eight of his prisoners have just been put on trial at the Caen Assizes charged with forgery of prison documents, awarding themselves good conduct certificates and premature discharges. But the case brought down the curtain on the episode on an appropriately happy note. The function of juries is to bring the ordinary common sense of the streets into the lawyers' workshop and common sense may include a sense of humour. The jury at Caen duly fulfilled their functions. Laughing, they acquitted the eight prisoners. The comedy was ended and there was applause in court.

LOCK IN OR LOCK OUT

ONE would have thought (and if one was shamelessly irresponsible one would have hoped) that the example of Pont L'Eveque would have had some effect on the conduct of the recent strike of the 7,000 warders who guard the 35,000 prisoners in the 120 gaols of France. They were asking an extra £5 a month to bring their pay up to £35. The stoppage lasted for three days after which the Government, having considered and rejected the classical expedient of calling the strikers to the colours, agreed instead to examine their demands, indulge in no victimisation and pay them in full for the period when they were turning no keys. The technique of running a warders' strike is obviously delicate and difficult. There is the "break up" method of sending all the boarders home like schoolboys at the end of term. There is the "walk out" method of just going home and leaving the prisoners in charge. There is the Pont l'Eveque method of turning the prison into a residential hotel with perhaps the additional embellishment of service charges to supplement the warders' wages, so much for breakfast in bed, so much for an *à la carte* menu. But the striking warders chose the "lock in, lock out" method. The prisoners were locked in their cells, which was dull for them but saved them any hard labour they might otherwise have been performing. Visitors and legal advisers were locked out. Men due for discharge were released, but no new prisoners were admitted and accused persons were not produced for trial. It was this that really embarrassed the authorities, because, on the one hand, the law requires that arrested persons should be committed to prison within twenty-four hours of arrest and, on the other, the criminal courts found themselves without their usual raw material to work on and had to adjourn their sittings. If the current wage negotiations fail to produce satisfactory results, the warders next time may try the Pont l'Eveque method. It would be a lot jollier both for themselves and for their charges.

WORLD CLIMATE

INCIDENTALLY, the plea of Monsieur Bilea's counsel that he was only anticipating the more enlightened methods of the barless prison had more substance in it than those who are still living mentally in the old "broad arrow" epoch may realise. All over the world the mental climate of prison administration is not what it was. Sweden has had something like a Bilea episode, for the Prison Board there is investigating with fascinated curiosity the trading enterprise of a convict who carried on a successful export-import business from the city prison in Stockholm. He had the use of the prison telephone, was granted several 72-hour periods of leave to organise business lunches and arranged the import of £35,000 worth of Japanese cycle lamps. Of course, once you adjust your mind to think of imprisonment as an aspect of social life and not as a segregation from it, there is room in its scope even for Japanese cycle lamps. The Americans have been known to give a convict sportsman six months' leave because his baseball team could not get on without him. Sometimes they let convicted men serve relatively short sentences in a succession of week-ends. Perhaps one day Pont l'Eveque Prison may be a national monument after all.

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

Conveyancing Costs

Sir,—A typical case of a complaint about conveyancing costs is: "I bought a house for £3,500 and my solicitor's bill came to nearly £120." When that bill is examined it consists of £70 stamp duty, £8 15s. Land Registry fees, and about £1 paid to local authorities and only £37 10s. for the solicitor.

A few years ago it was noticed in this office that complaints about conveyancing costs were almost invariably made by a purchaser, rather than by a vendor, and the figure he complained about was the total of the bill and the disbursements. Since then my firm has kept major disbursements off the bill of costs. The client always has to have a cash account, and stamp duty and other fees paid to the Government appear on that account as one item and the solicitor's costs, not weighted by a lot of disbursements, as another. It is rare to hear a complaint of high charges when this is done.

W. H. BETTS.

London, W.C.1.

Sir,—Surely one of the tests to apply is whether the client is satisfied.

When I first joined my late father in practice in 1920, all self-respecting Nottinghamshire solicitors were charging the 1883 scale, without any increases, and I well remember his telling me that he had far fewer complaints than in pre-1914 days when the usual thing had been to reduce the 30s. per cent. on the first £1,000 to 21s. per cent.

We now charge the full scale, with all authorised increases, and my own experience is that we get practically no complaints at all. Of course there is the occasional odd client who thinks our charges a bit stiff, but he nearly always sees reason when things are explained to him, and there is always, of course, the regular client who would always grumble even if we charged him half the scale, but who not only pays up but continues to send us his work.

It is not a bad idea to have a copy of the "Oyez" Table of Costs on a Sale of Land on the table in the waiting room, which clients can consult while they are waiting.

J. H. ALCOCK.

Mansfield.

Sir,—Were Mr. Warburton to concentrate his argument on the question of how to expedite conveyancing I should applaud his every word. I must, however, dispute his thesis that conveyancing is grossly overpaid.

In the first place, such experience as I have suggests that the client's usual complaint is about "how long" rather than "how much." Is Mr. Warburton not guilty of the fallacy that, because conveyancing is much better paid than litigation, therefore conveyancing is overpaid? The public is (naturally) concerned about the costs of litigation; to make this work pay, the fees would probably have to be doubled. Obviously the costs of litigation have to be kept to a bare minimum, since in many cases the solicitor is paid by someone other than his client.

Mr. Warburton wittily asserted, in his first letter, that the agents' fees are no more relevant to this question than the dentists'. With all respect, this is nonsense. The client pays both at (about) the same time, and pay both for (to him) the same job. If it be admitted that there is relevance in the comparison, I invite Mr. Warburton to consider a couple of instances, based on recent experience :—

1. Company *A* sells houses for £2,000 on estates of 100 houses each ; in the usual modern fashion the plots are sold freehold with a separate building contract. The company does not care to handle the sales itself and employs an agent. Half a dozen posters, and half a dozen advertisements in the local Press, produce a clamorous queue of anxious buyers. Having produced them, the agent's job is done ; now and then someone breaks off the negotiations, and the next name on the list is taken up. The (unregistered) title is complicated, since the estate is bought in many parcels and it is difficult to match up the various old plans with the estate plan. For each sale the solicitor will have a good fat file of correspondence and papers ; and if it should appear that the title is incorrectly deduced he is liable in damages to the company. The agent's costs are about £5,500 ; the conveyancer's about £1,000.

2. Company *B* sells luxury flats on 99-year leases for about £3,000 each. It secures its applicants by advertising in the Press ; since the agent's fees on an estate of 100 flats would be about £8,500, Mr. Warburton may agree that this is sensible ; despite the price of the flats, and the complicated and restrictive terms on which they are offered, a surprising number of purchasers are forthcoming. The legal costs are about £5,000 ; for each flat the correspondence is very much larger and less easy than that relating to an ordinary freehold sale.

In neither case could the client have done more than a fraction of the solicitor's work. Either company could (and one did) find the purchasers without difficulty. How does this square with Mr. Warburton's proposition that the agent does a good job but the conveyancer is a parasite ? For it amounts to this : if conveyancing with registered titles is " little more than a spare-time occupation," then the conveyancer is a mere parasite whose disappearance is imminent.

As to Mr. Lund's defence of conveyancing costs, with respect, Mr. Warburton has missed the point. Nobody seems to have started an outcry about " huge " advances in agents' commission ; at least, I never heard of this. Both these fees (and, I suggest, accountants' and dentists' fees) have advanced at something like the rate appropriate to the fall in money values.

In any event, does Mr. Warburton really consider conveyancing, with registered titles, as merely filling in a few forms ? Now and then it is ; now and then the barrister gets a £500 fee and is not called upon to argue ; now and then the garage man sells a £5,000 car and collects 15 per cent. ; now and then we have to sit down for a couple of hours to draw a contract to sell a couple of plots of land for £100 each. The scale-fee system is justified because of its rough-and-ready justice and its certainty. To single out the odd straightforward case and cry, " What ? Fifty pounds for that ? " is so foolish as not to be worth countering.

What I would like to urge is the improvement in efficiency. When shall we be rid of the fool who asks whether a house in Mayfair is agricultural land ; whether the half-built house has suffered war damage ; whether we will agree to defer requisitions until production of title deeds when the title is registered ? Given universal registration of title, and less miserable delays by local authorities in handling local searches, we could surely reduce the present six or seven weeks between instructions and completion to about three weeks. The curious thing, however, is that, if we do so, the client wishes we had taken a little longer ; the agent has not yet found a purchaser for his present house, and so on.

P. R. MURSELL.

London, E.C.4.

Sir,—It is strange how confirmation of Mr. Warburton's prophecy of woe comes in your current issue.

First in that delightful article " Forty Years On " we have the picture of private practice in 1914 with the sound " bread and butter " items of part-time public appointments, now so much only a memory of the past, and less emphasis then than now on conveyancing on the private side of the practice.

Next on your advertisement page we see that builders and building societies and public companies are all advertising for whole-time solicitors, appointments which must restrict the quantity of work going to those still in private practice. What is the cause ? What is the cure ? These are matters which should be discussed and on which I for one would appreciate others' views.

May I quote for consideration two jottings from my practice—

(1) A go-ahead builder client remarked to my clerk, " I've built thirty houses this year. If I can double this output it will pay me to get a tame solicitor."

(2) This spring I issued a summons against a tenant who was no longer using his house as his residence and obtained an order. Scale costs were under £10. Last week the client brought in the purchaser to whom he had sold the vacant house. I am to act for both parties and the building society concerned—scale costs £66 10s. If skill and time spent on the case were alone the criteria of costs, these figures would be reversed.

It certainly seems that conveyancing costs are now so far out of step with other costs that unless some change comes, there is more than a possibility that the profession will lose its golden eggs and will be left only with those of poor financial quality.

A. RAWLENCE.

Croydon.

Advancing the Profession

Sir,—The members of the Council of The Law Society give generously of their time and ability for the good of the profession, especially on a national basis and in consultation with the Government of the day, and no one can deny that to advance the profession as an abstract conception is admirable, but are there not many practical objectives which might at the same time be pursued ?

The following are matters on which your readers may have views :—

(1) Could not a solicitors' insurance union be formed which would cover and if necessary pay for the defence of claims against solicitors, and undertake other insurance work ?

(2) Could not a solicitors' building society or finance company be formed which would finance the purchase by solicitors of houses and practices, or shares in the practices ?

(3) If the Millard Tucker report is implemented could not the profession run its own pension and retirement benefit scheme thus retaining for the profession the profit element which the insurance companies would take ?

(4) Could not a solicitors' benevolent scheme be run by The Law Society on the basis of contracting in, or out, by all members ?

(5) Could not r. 2 of the Solicitors' Practice Rules, 1936, be amended so as to make it effective ? A national scale would be a natural corollary.

(6) Could not a further effort be made to do away with App. N and all that ? Solicitors simply cannot get the staff to do folio counting nowadays, even if they could afford to pay them.

(7) Would it be possible to draw up London and provincial wage rates for unadmitted clerks, typists and other employees ?

(8) Is it a good idea to devote time and money to public relations ? The only publicity the profession ever gets is undesirable, e.g., those paragraphs sedulously inserted in the national Press whenever an unfortunate practitioner is removed from the roll.

(9) Is it not time the solicitors were paid, and paid promptly, their full fees for legal aid work without the 15 per cent. deduction ?

No doubt readers will have other suggestions to make, but it will be interesting to see if any of your readers agree that there are quite a number of practical everyday objectives which it would be desirable to attain.

Possibly the first outcome of this letter will be a suggestion that solicitors should write less letters and take more interest in The Law Society.

A. J. NEWSOME.

Coventry.

The Solicitors' Compensation Fund

Sir,—I was explaining the object of the Solicitors' Compensation Fund to a friend the other day when my wife remarked : " Is that

what it's for? I thought the object was to compensate solicitors whose clients do not pay their costs."

It occurred to me that this was a very sensible idea particularly as solicitors are not encouraged to sue for their costs. When they do it usually attracts adverse publicity.

Since one of the objects of the fund is to counteract the adverse publicity which results when a solicitor defrauds a client, much the same purpose would be served if the fund were used, with suitable safeguards, to save a solicitor the trouble of having to sue clients for costs which they will not, or cannot, pay.

SILAS KRENDEL.

Watford.

Business Premises: Effect of Sale of Reversion

Sir,—It was with considerable interest that we read, in your issue of 24th September last, your correspondent's article on the effect of the sale of the reversion of business premises with reference to Pt. II of the Landlord and Tenant Act, 1954. Having been concerned on behalf of the tenants in the case of *X.L. Fisheries, Ltd.* v. *Leeds Corporation* with which the article deals, we would, however, like to draw attention to a slight inaccuracy in the article. It was not, in fact, the case as stated by your correspondent that the certificate of the Home Secretary under s. 57 had been granted. At the time of the hearing in the county court and at the time of the hearing of the appeal, the Home Secretary had given no decision and did not do so until after the conclusion of the case. In point of fact, this is not vital in considering the issues involved in the case as even if a certificate had been issued the tenants would still have claimed that s. 57 did not apply. The certificate not having been granted, the point, of course, did not arise. Finally, may we congratulate your correspondent on the advice given to mitigate the hardship caused by what appears to be a draftsman's oversight, with which advice we entirely agree.

BRETHERTON, DITCHBURN & NELSON.

Sunderland.

[I am obliged for the correction and am to blame for the inaccuracy; my misreading, indeed, caused me to miss the point that a mere notification that "the question of the giving of" a certificate is under consideration under s. 57 (2) can, by virtue of subs. (4) (*b*), put the request for a new tenancy into a state of suspended animation. The facts mentioned also occasion the reflection that "is under consideration" should be widely interpreted if the object is to be achieved—a tenant is apparently entitled to assume that consideration commences when the application reaches the department, if not, indeed, when it has been dispatched. In this matter, the Home Secretary apparently took more than seven months to decide whether police should replace plaice . . .—R.B.]

REVIEWS

Chitty's Mercantile Contracts. Edited by BARRY CHEDLOW, of the Middle Temple, Barrister-at-Law. 1955. London: Sweet & Maxwell, Ltd. £2 15s. net.

This is a new book for students, in particular those who intend to take mercantile law as their optional subject in the Solicitors' Final Examination. It is based on the second volume of the new Chitty on Contracts, and as the editor tells us in language we will not attempt to better, there has been a considerable re-arrangement so as to convert what was essentially a practitioners' work of reference into what is primarily a students' textbook meant to be read. We find that this entails that lotteries, marriage contracts and conflict of laws have disappeared as separate chapter headings from the scheme of specific contracts worked out in the parent work, the citation of reports and, in some cases, of authorities is abbreviated and the numbering of paragraphs is omitted. For the rest the student is given the classic text, shorn only of its more esoteric instances.

We think that this blooding of the articled clerk in the use of a great lawbook while he is still at his studies is a very good thing. He will already have read and graduated through some more explanatory treatise, and there is no reason why he should not be ready to learn the handling of the tools along with the other mysteries of his chosen trade.

Pageantry of the Law. By JAMES DERRIMAN, of Lincoln's Inn, Barrister-at-Law. 1955. London: Eyre & Spottiswoode. £1 5s. net.

The erudite author of this work has produced a unique volume on a subject very little investigated. Systematically delving into the practice and history of legal ceremonial, including the robes of judges and counsel, he has brought together a vast amount of information never before collected between two covers. This alone should make it an indispensable addition to every law library as an essential work of reference, despite the rather unwisely high price of 25s. which the publishers are asking. The customs of the Inns of Court and the circuits, ceremonials at the Law Courts and the Old Bailey, all are here. The style is easy and readable, though it cannot always overcome the difficulty of holding the attention in handling detail which must be meticulously accurate, nor does it ever rise to the stature of the grand style which would convey the glories of our blood and State, though these are the very soul of pageantry. It is a workmanlike and comprehensive record. The twelve illustrations are very good indeed.

The Student's Guide to Company Law. By FRANK H. JONES, F.A.C.C.A., A.C.I.S., in collaboration with RONALD DAVIES, M.A., Barrister-at-Law and DENIS HAYES, LL.B., Solicitor. 1955. London: Jordan & Sons, Ltd. 19s. 6d. net.

So yet another book is added to those dealing with company law. This one is designed for students preparing for accountancy, secretarial and commercial examinations. It follows the technique of using bold type for emphasis, with bold capitals for special emphasis, but this technique has been much overdone and in many places the bold type serves no useful purpose. At the end of each chapter appears: "Special Points Emphasised for Students"—one wonders whether students will not use these to decide as to what they can afford to ignore in the preceding chapter—and specimen "Examination Questions" culled from a variety of sources. The author has written a good few books on subjects affecting companies and his experience manifests itself in that this new book is well written and in consequence easy to read. A book for the student is usually condensed and therefore liable to inaccuracy, and one can find this sort of inaccuracy in this book; for example, on page 97, which implies that s. 45 of the Companies Act, 1948, applies to all public offers for sale. A students' basic text-book should lead the student along step by step, assuming on each page that he knows nothing about the subject-matter beyond what appears on previous pages, but in this book the student needs some understanding of shares and debentures long before they are explained, and in other respects also the order of contents is unsatisfactory.

The Conversion of Old Buildings into New Homes for Occupation and Investment. By C. BERNARD BROWN, L.R.I.B.A. 1955. London: B. T. Batsford, Ltd. £2 5s. net.

The architect author of this attractively produced book has a healthy respect for the solicitors' profession, in which "there is a reasonably high minimum standard of ability" (see p. 9), and at every step the lay client is strongly advised to obtain legal advice before he is committed. In fact, the author's knowledge of the law is sound, although we suspect that he must have had some assistance from a legal colleague, especially in the preparation of the very excellent precedents appearing at the end of the book—the precedent for a conveyance of a freehold flat is similar to that appearing in 14 Conv. (N.S.) 453, in particular in its inclusion of a right of re-entry in favour of the vendor on breach of a covenant, limited to take effect within the perpetuity rule, the necessity for which is explained by Miss Tolson in the same volume of "The Conveyancer" (vol. 14, p. 350).

The substance of the book is, as the title suggests, a description of the various methods by which old houses or other buildings, such as stables or Victorian billiard rooms, can be converted into one or more modern homes. Most ingenious, too, are some of Mr. Brown's suggestions, such as his uses for basements, the methods of concealing the fact that a room on an upper storey has no door, and such matters as the removal of one staircase in a pair of old terrace houses.

Throughout the book practical economies are considered, and such matters as income tax, fire insurance, improvement grants under the Housing Act, 1949, and the local building by-laws are

fully discussed. In the early chapters, the author has a great deal to say on the subject of contracts for purchase, and comments favourably on "the new form of legal contract which can be signed by the parties immediately they agree"; presumably this refers to the latest editions of the standard conditions. All types of buildings are discussed, including such major schemes as the conversion of a complete crescent (The Paragon, Blackheath), and officers of local authorities will be interested in the discussion of the "Stockton experiment" and the "Croydon experiment" for the improvement of small terrace houses. The chapter on repairs and maintenance is like all the book, extremely practical, and we also found the comments on dry-rot (p. 154 *et seq.*) interesting.

The final chapter, besides incorporating the precedents which, although sound, will be already available elsewhere to most solicitors, makes some brief but accurate comments on the incidence of the Rent Acts, and also includes some most useful scales of fees—surveyors, estate agents, solicitors, stamp duties, architects (or rather, "architectural services"), quantity surveyors, etc.

The illustrations take the form of exceptionally clear photographs, mostly of the "before and after" conversion type, and also scale plans, although we suspect that the latter would not always be sufficiently detailed for all the purposes of an architect.

From Gun to Gavel. The Courtroom Recollections of James Mathers. By MARSHALL HOUTS. 1955. London: Souvenir Press, Ltd. 15s. net.

The title of this book may help the popular sales, but does far less than justice to its remarkable quality. Court recollections are usually didactic, pompous and egotistical. The Wild West is one of the most over-used backgrounds for drama and melodrama. Yet these reminiscences of James Mathers, a lawyer in Oklahoma, who started in practice in 1895, have a zest, a freshness and a simplicity which is wholly engaging and delightful. In his early days murder was a commonplace, and judges and counsel wore their guns in court as a matter of course and of common prudence, yet there is here no exploitation of the sensational. The book consists of a score of self-contained episodes casually and conversationally related and reported with sympathetic skill by Marshall Houts. The strange, the dramatic and sometimes the fantastic in these stories gain immensely in effectiveness by a style devoid of affectations. Not only to the lawyer but also to the social historian they make fascinating reading. Not least valuable are the incidental comments, full of common sense and humanity, of a man who has seen the administration of justice develop from simple and primitive beginnings to the most technical complexity.

TALKING "SHOP"

MID-WEEK REFLECTIONS

November, 1955.

I do not propose to fish in the troubled waters of the Warburton controversy on conveyancing costs, at least not much. But I venture this one comment—a glimpse of the obvious as yet unrevealed by embattled correspondents—that *everybody* may be right and that it is the system that is all wrong. The customers are right—that goes without saying—and we may grudgingly concede this point whether our flesh creeps at Mr. Warburton's phrase "mounting antagonism" or whether it doesn't. And, unnatural as it may seem (*vide* "Suburban Solicitor's" remark about "the constant denigration of our profession," to which this column pleads "not guilty"), the solicitors are also right, both individually and corporately. Most firms, or so it is said, have no option but to subsidise unprofitable county court and other work with conveyancing profits; and in any case they may get into trouble if they hold themselves out as willing to do conveyancing work for less than a minimum scale. Offhand I cannot think of anybody who is wrong. (Except, perhaps, Mr. Warburton in his generous concession that no such practice of a conveyancing unit on that scale and making just those profits in Mayfair exists. Possibly not, but I have heard of one in the suburbs not noticeably different. The net profits were £6,000 compared with Mr. Warburton's figure of £7,500, but then all the papers were sent to counsel's chambers and most of the work was done there, doubtless at a fee. Whether, as a result of this convenient arrangement, the principal played a round of golf before lunch as well as after, is a matter for speculation.)

Then, if everyone is right, what is wrong? Surely the system. Is it not remarkable that the profession should be deemed competent to evolve and administer the vast scheme of legal aid, but on the other hand should not be entrusted to fix its own scale of professional charges? One can see little prospect of improvement until the profession is made autonomous in the matter of costs, both contentious and non-contentious. As everybody knows, changes can at present be made only by immense and prolonged labour on the part of the Council. Not so long ago the profession was exerting itself for an increase in the conveyancing scale, which was achieved by exactly that process. It was no small achievement either, and heaven knows what patience and skilful presentation of the case and perseverance *fortiter in re* by our mostly unthanked members of the Council contributed to it. And yet what an absurdity! If The Law Society could control these matters *suo motu*, it should be possible to make suitable and rapid adjustments, and we should hear less of anomalies and subsidies and profiteering.

In brief, we have not yet shaken off the associations of Dodson & Fogg—Dickens has a lot to answer for—and it is high time that we did. When it is said of *X* that he could not run a whelk stall, the speaker as a rule means to say that *X* is a thoroughly unbusinesslike person and should not be entrusted with such an enterprise. But be it premised that, under the Shell-Fish Sellers Act, *X* must sell his whelks at a price that creates "mounting antagonism" in the market and his winkles at a dead loss, and we may spare some sympathy for *X*. We would advise him to join the bureaucracy at a graded salary and with pension; on no account should he enter our profession where he would find that the same system prevails.

"ESCROW."

At the opening of Burton upon Trent Quarter Sessions, tributes were paid by the Recorder, by senior counsel and by the Mayor to Mr. H. Bailey Chapman, who on 27th October completed twenty-five years' service as Town Clerk and Clerk of the Peace for Burton.

Mr. W. T. S. Digby-Seymour, solicitor to Derbyshire County Council, has resigned to enter private practice in London.

Mr. Denis Lyth, solicitor, of Leeds, was admitted a Freeman of York at a meeting of the Freemen's Court in York Guildhall on 14th October.

Mr. John Wardle, of Leek, claimed to be the country's oldest practising solicitor, was entertained on 24th October to a tea-party given by his fellow solicitors in the town to mark his 95th birthday.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

AUCTION: "DAY FIXED FOR THE SALE": CONSTRUCTION

Vincenti *v.* Borg

Lord Morton of Henryton, Lord Keith of Avonholm, Lord Somervell of Harrow, and Mr. L. M. D. de Silva
17th October, 1955

Appeal from the Court of Appeal of Malta.

On 24th July, 1946, the Civil Court of Malta made an order that the suit property be sold by auction. On 20th June, 1947, a sale notice appeared in the Government Gazette that an auction would take place on 18th July, 1947. On 17th July the sale was adjourned. On 30th December, 1947, a second sale notice appeared in the Gazette announcing that the sale would take place on 22nd January, 1948. The sale was still further adjourned, until finally, on 28th February, 1948, the property was "adjudicated" at an auction to one Theuma for £21,300. It was permissible under the law of Malta for higher bids to be made after the auction. Such bids were made, and the property was finally adjudicated to the appellant on 1st April, 1948, for £32,200. The respondent, on 3rd September, 1948, acting as attorney for and on behalf of two nieces, exercised a right of pre-emption in respect of the property. The Court of Appeal of Malta, affirming a judgment of the Civil Court, held that the respondent had validly exercised the right of pre-emption. The appellant on the present appeal contended on a number of grounds that the respondent was not entitled to exercise the right, but the only one urged on this appeal was that subs. (2) of s. 1520 of the Civil Code of Malta barred the respondent from exercising the right. Section 1520 of the Code provided: "(1) Where the sale was made by judicial auction, the right of pre-emption shall not be competent to the persons to whom notice of the proposed sale was given by service of a copy of the advertisement mentioned in section 314 of the Code of Organisation and Civil Procedure. (2) The provisions of this section shall also apply to absent persons if the said advertisement shall have been published in the Government Gazette at least one month before the day fixed for the sale." The respondent's nieces were at all times material to the advertisements and the sale in the present case absent from Malta.

Mr. L. M. D. DE SILVA, giving the judgment, said that it would be seen that in each of the two sale notices of 20th June, 1947, and 30th December, 1947, the interval of time between the date of publication and the day fixed for the sale in the notice was less than a month. Under subs. (2) of s. 1520, in order to preclude "absent persons" from exercising their right of pre-emption there must be an interval of "at least one month" between the date of publication and "the day fixed for the sale." If the words "the day fixed for the sale" meant the day fixed in the notice for the sale, it was clear that neither notice satisfied the requirements of the section. The appellant contended that the words "day fixed for the sale" did not mean the day fixed in the notice but the day on which the sale was actually held, namely, 28th February, 1948. If that interpretation were correct more than a month would have elapsed between the date of publication of each of the notices and "the day fixed for the sale" and the terms of the subsection would have been complied with. The appellant's interpretation was contrary to the natural meaning of the words in the context in which they appeared, and there was nothing to justify a departure from the day fixed for the sale in the notice. The appeal would be dismissed, and the appellant would pay the respondent the costs of the appeal.

APPEARANCES: *W. Raeburn*, Q.C., and *J. G. Le Quesne* (*Highwood & Smith*); *C. J. Colombos*, Q.C., and *N. Heald* (*Denton, Hall & Burgin*).

Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[1 W.L.R. 1137**

CRIMINAL LAW: "AGAINST WEIGHT OF EVIDENCE": INACCURATE GROUND OF APPEAL

Aladesuru and Others *v.* R.

Lord Tucker, Lord Somervell of Harrow and Mr. L. M. D. de Silva
19th October, 1955

Appeal from the West African Court of Appeal.

The appellants were convicted in the Supreme Court of Nigeria of having, as directors of the Standard Bank of Nigeria, Ltd., knowingly made and published a false balance sheet of the bank as at 31st March, 1952, contrary to s. 436 (*a*) of the Criminal Code of Nigeria. Their appeal to the West African Court of Appeal was dismissed, and they were granted special leave to appeal to the Judicial Committee. The main ground of appeal was that the West African Court of Appeal had struck out certain of the appellants' grounds of appeal in their notice of application for leave to appeal to that court without hearing argument thereon, in particular the ground that "judgment is against the weight of evidence." The West African Court of Appeal, in their judgment, said that "'that judgment is against the weight of evidence' is no ground of appeal in criminal matters . . . In criminal matters the proper ground of appeal is that 'the verdict is unreasonable or cannot be supported having regard to the evidence'," words taken from s. 11 (1) of the West African Court of Appeal Ordinance (Laws of Nigeria, 1948, c. 229), which provides that: "The Court of Appeal on any such appeal [from the Supreme Court] against conviction shall allow the appeal if they think that the verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence . . ."

LORD TUCKER, giving the judgment, said that it would be observed that the Ordinance followed the language of the English Criminal Appeal Act, 1907. The position was correctly stated at p. 436 of the thirty-third edition of Archbold's Criminal Pleading, Evidence and Practice, as follows: "In order to succeed an appellant must show, in the words of the statute, that the verdict is unreasonable or cannot be supported having regard to the evidence. It is not a sufficient ground of appeal to allege that the verdict is against the weight of evidence." A number of cases, most of them from the early English Criminal Appeal Reports, were cited by counsel for the appellants in the headnotes of which the phrase "against the weight of evidence" occurred with reference to applications to the Court of Criminal Appeal. It was submitted that that phrase had thus been treated as synonymous with "unreasonable or which cannot be supported having regard to the evidence." There could be no doubt that that phrase was inaccurate and was one which could not properly be substituted for the words of the statute. It should now be appreciated that the Nigerian Ordinance gave no appeal on such ground, but that did not mean that in a proper case the Court of Appeal would not give leave to appeal or review the evidence if a *prima facie* case was shown that the verdict appealed from was one which no reasonable tribunal could have arrived at. A second ground of appeal was that there was not sufficient evidence that the appellants were properly appointed directors of the bank. Their lordships were of opinion that, assuming proof of due appointment was required, there was abundant evidence from which the court could draw the inference that the appellants had been duly appointed directors of the bank. For those reasons their lordships had, on 27th July last, humbly advised Her Majesty that the appeal should be dismissed.

APPEARANCES: *Christopher Shawcross*, Q.C., and *David Kemp* (*Rexworthy, Bonser & Wadkin*); *J. G. Le Quesne* (*Charles Russell & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[3 W.L.R. 515**

COURT OF APPEAL

LANDLORD AND TENANT ACT, 1954: HOSPITAL BOARD OF GOVERNORS OCCUPYING PREMISES PURCHASED BY MINISTER OF HEALTH: NATURE OF OCCUPATION

Hills (Patents), Ltd. *v.* University College Hospital Board of Governors

Denning, Hodson and Morris, L.JJ. 10th October, 1955

Appeals from Bloomsbury County Court.

In 1948 leasehold property tenanted by a business firm near a teaching hospital and purchased by the hospital in 1947 for future hospital uses became vested as endowment property in the board of governors under the National Health Service Act, 1946. In 1954 the board agreed to sell the premises to the Minister of Health when vacant possession had been obtained, in order to use them for hospital purposes. When the leases expired in March, 1955, the business tenants applied under the Landlord

and Tenant Act, 1954, for a new tenancy. The board as landlords opposed the application on the ground set out in s. 30 (1) (*g*) of the Act of 1954, that " on the termination of the current tenancy the landlord intends to occupy the holding for the purposes . . . of a business to be carried on by him therein . . ." The county court judge refused the application for a new lease. The tenants appealed.

DENNING, L.J., said that the answer to the question whether the board intended to occupy these premises for the purposes of a business to be carried on by them therein depended on the real position of the governors in relation to the Minister under the National Health Service Act, 1946. The Act gave the board the task of managing and controlling the hospital on behalf of the Minister in accordance with such directions as might be given by him. His lordship could not agree with counsel for the tenants that the board would occupy only as the Minister's agents; for the board of governors of a teaching hospital were in a position superior to that of an ordinary agent. The Minister himself could not take out of their hands the task of managing the hospital and run it himself. Though it might be true that the Minister would occupy the premises, the board would occupy them also. Possession in law was single and exclusive, but occupation might be shared with others or had on behalf of others. Further, it seemed plain, on the definition of " business " in s. 23 (2) of the Act of 1954, that the governors intended to occupy for the purposes of an activity to be carried on by them therein, namely, managing the hospital. He would dismiss the appeal.

HODSON, L.J., dissenting, said that the Minister had power under s. 57 of the Act of 1954 to prevent a new lease being granted where premises were required for hospital purposes. He had not invoked that section. The question therefore was whether anyone had taken the right steps to prevent the tenants from getting a new lease. In his lordship's view there was no answer to the tenants' argument that the board were agents of the Minister. The language of the National Health Service Act, and particularly s. 13, supported the view that the board were not, in exercising their powers under the Act—extensive and important though those powers were—acting as principals. He could not see in what respect they were other than agents of the Minister. If they were merely his agents, the intended occupation was not that of the board but of the Minister, since there could not be two occupations. Similarly, the business to be carried on was that of the Minister and not of the board in their own right. He would have allowed the appeal.

MORRIS, L.J., delivered a judgment concurring with that of Denning, L.J. Appeal dismissed.

APPEARANCES: *Roy Wilson*, Q.C., and *Adrian Hamilton* (*Underwood & Co.*); *Tristram Beresford*, Q.C., and *J. D. F. Moylan* (*Pennington & Sons*).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[3 W.L.R. 523**

RENT RESTRICTION: ALTERNATIVE ACCOMMODATION: COUNCIL HOUSE IN ADJOINING HOUSING AREA

Sills *v.* Watkins

Denning, Hodson and Morris, L.JJ.
11th October, 1955

Appeal from Kingston-on-Thames County Court.

The Rent and Mortgage Restrictions (Amendment) Act, 1933, s. 3, provides: " (1) No order or judgment for the recovery of possession of any dwelling-house to which the principal Acts apply . . . shall be made or given unless . . . (*b*) the court is satisfied that reasonable alternative accommodation is available . . . (2) A certificate of the housing authority for the area in which the said dwelling-house is situated, certifying that the authority will provide suitable alternative accommodation for the tenant by a date specified in the certificate, shall be conclusive evidence that suitable alternative accommodation will be available for him by that date. (3) Where no such certificate as aforesaid is produced to the court, accommodation shall be deemed to be suitable if it consists either—(*a*) of a dwelling-house to which the principal Acts apply; or (*b*) of premises let as a separate dwelling on terms which will, in the opinion of the court, afford to the tenant security of tenure reasonably equivalent to the security provided by the principal Acts in the case of a dwelling-house to which those Acts apply and is, in the opinion of the court, reasonably suitable to the needs of the tenant and his family as regards proximity of place of work . . ." The landlord of a dwelling-house protected by the Rent Acts which was situated in the municipality of *T* sought to obtain possession, as he required the house for his own occupation. In proceedings in the county court he offered to give in exchange possession of a council house occupied by him in the adjoining municipality of *S*; this house, so far as rent and situation were concerned, was suitable to the tenant's requirements, and there was evidence that the *S* council would be prepared to accept the defendant as a tenant, but no certificate under s. 3 (2) of the Act could be obtained, as the houses were in different housing areas. The county court judge made an order for possession. The tenant appealed.

DENNING, L.J., said that the council house which the landlord offered fulfilled all the requirements of subs. (3) except in regard to security of tenure, but failed at that point. The letting of a council house involved a weekly tenancy with no security of tenure. In practice a local authority did not evict a tenant at a week's notice unless he failed to pay his rent or behaved badly, but the tenants had no security and the requirements of subs. (3) were not satisfied. The court could not read the words " on the terms " as if they meant " in circumstances." Except when a housing authority in the same area gave a certificate within subs. (2), a council house was not suitable alternative accommodation because it did not by its terms afford reasonable security of tenure.

HODSON and MORRIS, L.JJ., agreed. Appeal allowed.

APPEARANCES: *D. M. Wacher* (*Wilkinson, Howlett and Moorhouse*); *A. C. Warshaw* (*Bower, Cotton & Bower*, for *Sherwood, Cobbing & Williams*, Kingston-on-Thames).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[3 W.L.R. 520**

LANDLORD AND TENANT: APPLICATION FOR NEW LEASE OF BUSINESS PREMISES: OPPOSITION BY LANDLORD TO BE ON GENUINE GROUNDS: " SUBSTANTIAL PART " OF PREMISES A QUESTION OF FACT

Atkinson *v.* Bettison

Denning, Hodson and Morris, L.JJ. 13th October, 1955

Appeal from Mansfield County Court.

The Landlord and Tenant Act, 1954, provides by s. 30: " (1) The grounds on which a landlord may oppose an application [for a new tenancy under the Act] . . . are such of the following grounds as may be stated in the landlord's notice . . . that is to say . . . (*f*) that on the termination of the current tenancy the landlord intends to demolish or reconstruct the premises comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof and that he could not reasonably do so without obtaining possession of the holding; (*g*) subject as hereinafter provided, that on the termination of the current tenancy the landlord intends to occupy the holding for the purposes, or partly for the purposes, of a business to be carried on by him, or as his residence. (2) The landlord shall not be entitled to oppose an application on the ground specified in para. (*g*) of the last foregoing subsection if the interest of the landlord . . . was purchased or created after the beginning of the period of five years which ends with the termination of the current tenancy . . ." The tenant of a provision shop applied to the landlord, a jeweller, for a new lease; the landlord refused, as he wished to open a jeweller's shop on the premises, which consisted of a shop on the ground floor and two storeys above used for storage. On an application by the tenant to the county court for an order under the Landlord and Tenant Act, 1954, directing the grant of a new lease, the landlord, who could not oppose the application on the ground that he required possession for himself, as he had only recently acquired the premises, opposed on the ground that he required possession in order to reconstruct a substantial part of the premises in order to make them suitable for a jeweller's shop. The proposed work was the provision of a new shop-front of a different type, the demolition of a wall at the back of the shop, so as to throw the whole ground floor into the shop, a complete re-laying of the floor in a different material, and the provision of extensive new shop fittings. No work was to be done on the upper floors. The county court judge found that the real purpose of the landlord was to get possession so as to carry on a business of his own, and that the proposed reconstruction was merely ancillary to that purpose. He also found that the part of the premises affected was not a " substantial part," and directed the grant of a new lease. The landlord appealed.

DENNING, L.J., said that as the real purpose of the landlord was to get possession, and the proposed work was secondary or ancillary, the decision of the Court of Appeal in *J. W. Smart (Modern Shoe Repairs), Ltd.* v. *Hinckley and Leicestershire Building Society* [1952] 2 T.L.R. 684 applied. That decision was under a different Act, but the provisions were similar: it showed that the landlord's primary purpose must be to reconstruct. That was not the primary purpose in the present case, and the landlord could not be allowed to circumvent the Act by putting forward a secondary purpose as if it were the main purpose. Secondly, there was the question whether the proposed work was a reconstruction of a substantial part of the premises; that was a question of degree, and therefore of fact for the judge to decide. His decision was one to which he could properly come, so that the court could not interfere.

HODSON, L.J., agreeing, said that the judge had expressed the hope that he could obtain some guidance from the court as to how the word "substantial" was to be approached. But all that the court could do was to refer to what was said by Lord Simon in *Palser* v. *Grinling* [1948] A.C. 291, at p. 317, that the question was to be left to the discretion of the judge, the onus being on the landlord.

MORRIS, L.J., agreed. Appeal dismissed.

APPEARANCES: *W. A. Sime* (*Gibson & Weldon*, for *P. A. Foster*, Mansfield); *J. A. Plowman*, Q.C., and *A. R. M. Ellis* (*Taylor, Jelf & Co.*, for *Shacklock, Bosworth & Hooton*, Sutton-in-Ashfield).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 1127

QUEEN'S BENCH DIVISION

SHIPPING: BILL OF LADING: DEVIATION DUE TO STRIKE: CLAIM TO DISCHARGE AT FOREIGN PORT

G. H. Renton & Co., Ltd. *v.* Palmyra Trading Corporation of Panama

McNair, J. 7th October, 1955

Action.

Quantities of timber were shipped on board the s.s. *Caspiana* at Canadian ports under four bills of lading, three of which stated the timber to have been shipped "for carriage to London or so near thereunto as the vessel may safely get . . ." Under the fourth bill of lading the port of destination was Hull. All four bills of lading were substantially in the same form. They incorporated the Hague Rules as enacted in the country of shipment, so that the Water Carriage of Goods Act, 1936, of the Dominion of Canada and the rules scheduled thereto applied. The bills of lading provided also, by cl. 14 (*c*) of the printed conditions, that "should it appear that . . . strikes . . . would prevent the vessel from . . . entering the port of discharge or there discharging in the usual manner and leaving again . . . safely and without delay, the master may discharge the cargo at port of loading or any other safe and convenient port . . ." By cl. 14 (*f*) "the discharge of any cargo under the provisions of this clause shall be deemed due fulfilment of the contract." The vessel left Nanaimo, British Columbia, on 3rd September, 1954. While she was on passage strikes broke out in the ports of London and Hull and the defendants caused the ship to proceed to Hamburg and there discharge the cargoes destined for both those ports. The shipowners took no steps to forward the cargoes to London and Hull at their own expense but made them available to the plaintiffs, the indorsees and holders of the bills of lading, at Hamburg on payment of full freight. The plaintiffs claimed damages for breach of contract, but the defendant shipowners contended that by discharging at Hamburg they had effected due delivery under the bills of lading.

MCNAIR, J., said that the proper mode of approach was first to consider whether, apart from the Act and rules, the bills of lading properly justified the shipowners' action. If they did not, the shipowners' position could not be improved under the Act and rules; if they did, it would be necessary to consider how far, if at all, the Act and rules cut down the shipowners' rights. At common law it appeared that there was no reported decision entitling a shipowner to deliver elsewhere than at the port named in the bill. A consideration of *Glynn* v. *Margetson* [1893] A.C. 351, *Frenkel* v. *MacAndrews & Co., Ltd.* [1929] A.C. 545 and *Connolly Shaw, Ltd.* v. *A/S Det Nordenfjeldske D/S* (1934), 49 Ll. L. Rep. 183, showed that deviation clauses, unless very aptly worded, must not frustrate the object of the voyage. In the present case it was clear that the main object of the contract was the carriage of timber to London or Hull, and that that object would be frustrated if the shipowner purported to fulfil his obligations by delivery elsewhere, the further delivery to the port of destination being carried out at the consignee's expense. In the circumstances the shipowners were justified under cl. 14 (*c*) in discharging at Hamburg with a view to forwarding the cargo to London at their own expense; but para. (*f*) was so inconsistent with and repugnant to the primary and unqualified promise to deliver at London that it must be rejected. The bill of lading did not provide for alternative ports of discharge. That decision was sufficient to decide the issue of liability in favour of the consignees, but it was in no way altered by the effect of the Canadian Act and the Hague Rules incorporated therein. Judgment for the consignees.

APPEARANCES: *A. A. Mocatta*, Q.C., and *R. A. MacCrindle* (*William A. Crump & Son*); *T. G. Roche*, Q.C., and *A. Bateson* (*Richards, Butler & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [3 W.L.R. 535

SHOP: EARLY CLOSING: APPLICATION OF LOCAL ORDER TO SHOP REGISTERED AS JEWISH

Miller's Cash Stores, Ltd. *v.* West Ham Corporation

Lord Goddard, C.J., Ormerod and Glyn-Jones, JJ.
13th October, 1955

Case stated by West Ham justices.

The Shops Act, 1950, provides by s. 1 that every shop shall close on one weekday in every week not later than one p.m., on a day to be fixed by order of the local authority, provided that "where the day fixed is a day other than Saturday, the order shall provide for enabling Saturday to be substituted for such other day as respects any shop in which notice to that effect is affixed by the shopkeeper." By s. 53 a shop may be registered with the local authority as Jewish, in which case references in s. 1 to weekdays are to be construed as references to weekdays other than Saturday, and "Friday" is to be substituted for "Saturday." Section 76 repealed the earlier legislation but preserved instruments made thereunder which were to "have effect as if made or done under the corresponding provision of this Act." An order made by a local authority under the Shops Act, 1912, provided that all grocers' shops in the borough should close at 1 p.m. on Thursdays, provided that any shopkeeper might substitute Saturday on affixing a notice. The defendants, who were registered under the Shops (Sunday Trading Restriction) Act, 1936, and subsequently under s. 53 of the Act of 1950 as the occupiers of a Jewish shop, closed the shop on Wednesdays at 1 p.m. and all day on Saturdays (affixing notices to that effect) but kept open on Thursday afternoons. On an information charging them with a breach of the local order, they contended that, since the order did not contain a proviso that registered shopkeepers might substitute Friday for Thursday, the order did not apply to their shop. The justices convicted; the defendants appealed.

LORD GODDARD, C.J., said that the effect of the saving clause of s. 76 was that in the local order one of the provisions which could have been made, and must therefore be deemed to have been made, was that in the case of a registered shop "Friday" must be substituted for "Saturday." When all the sections were considered together it was clear that Parliament intended that in the case of Jewish shops "Friday" must always be read instead of "Saturday." All orders depended on the Act, and must be read with the corresponding substitution, and the offence charged was one against the Act. The justices had come to a correct decision.

ORMEROD and GLYN-JONES, JJ., agreed. Appeal dismissed.

APPEARANCES: *R. Bernstein* (*Breeze, Benton & Co.*); *A. G. F. Rippon* (*G. E. Smith*, Town Clerk, West Ham).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 1121

FOOD AND DRUGS: FITNESS FOR HUMAN CONSUMPTION: BUN CONTAINING PIECE OF METAL

J. Miller, Ltd. *v.* Battersea Borough Council

Lord Goddard, C.J., Ormerod and Glyn-Jones, JJ.
14th October, 1955

Case stated by London stipendiary magistrate.

By s. 3 of the Food and Drugs Act, 1938, it is an offence to sell food or drugs not of the substance, nature or quality demanded

by the purchaser. By s. 4 it is a defence to a charge under s. 3 to prove where the food "contains some extraneous matter, that the presence of that matter was an unavoidable consequence of the process of collection or preparation." By s. 9, the sale of "food intended for, but unfit for human consumption" is an offence punishable with a fine up to £50 or imprisonment for three months, or both. The defendants were charged with an offence under s. 9 by selling food "unfit for human consumption." They had sold a bun containing a small metal object. Before the magistrate they contended that the charge should have been under s. 3, which afforded defences not open under s. 9. The magistrate rejected this contention and convicted. The defendants appealed.

LORD GODDARD, C.J., said that it was plain that the presence of extraneous matter in food was an offence against s. 3. But ss. 9 to 12 were concerned with what the Act called "unsound food," and it could not be said that food became "unsound," that was to say, rotten or putrid, merely because there was a piece of metal in it which had no effect on its general composition. People buying game would expect to find shot in it, and that did not make it unfit for human consumption; similarly, at Christmas time, threepenny-pieces were put into plum puddings. Under s. 3 there were defences open which were not available under s. 9, and the penalties under the latter section were more severe. The appeal should be allowed.

ORMEROD and GLYN-JONES, JJ., agreed. Appeal allowed.

APPEARANCES: *J. Burge* (*Claude Barker & Partners*); *P. Wrightson* (*Sharpe, Pritchard & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [3 W.L.R. 559

CERTIORARI: PREJUDICE: APPEAL TO QUARTER SESSIONS: DOCUMENTS TO BE PLACED BEFORE THE COURT

R. *v.* Grimsby Borough Quarter Sessions; *ex parte* Fuller

Lord Goddard, C.J., Ormerod and Glyn-Jones, JJ.
18th October, 1955

Application for an order of certiorari.

The applicant appealed to quarter sessions against a summary conviction on a charge of being found in enclosed premises for an unlawful purpose. During the course of the hearing at quarter sessions and before the recorder had come to his decision the clerk of the peace, acting in the interests of the applicant, handed a police report to the recorder and drew his attention to a certain passage. The recorder marked the passage and kept the report beside him during the rest of the hearing. The next line in the report, immediately below the passage to which the recorder's attention was drawn, stated that the applicant "has been previously convicted as follows": and there was set out a list of previous convictions. The recorder dismissed the appeal and the applicant, who had not put his character in issue, moved for an order of certiorari to bring up and quash the determination of the recorder.

LORD GODDARD, C.J., reading the judgment of the court, said that when, as in this case, the essence of the charge was the purpose for which the accused was on the enclosed premises it was obvious that information as to his previous bad character was not only highly prejudicial but probably fatal. It was not for every irregularity in the course of a hearing either in petty or quarter sessions that certiorari would be granted. In the opinion of the court, they ought to apply the same rule as in a case where bias on the part of a justice adjudicating was alleged, which was fully considered in the recent case of *R.* v. *Camborne Justices* [1955] 1 Q.B. 41, where it was held that there must be a real likelihood of bias, and so here they would say a real likelihood of prejudice. They emphasised that it was likelihood, not certainty. The court could not assume that the recorder did not become aware before he gave his decision that there were previous convictions, and that was enough to oblige the court to grant the order of certiorari. The case did, however, enable the court to remind quarter sessions that where there was an appeal against conviction no documents should be placed before the court except the conviction, the notice of appeal and copies of exhibits if they were going to be proved and no objection had been taken to their admissibility. They had learnt that at some courts it was the usual practice to supply a copy of notes taken by the clerk to the justices. That was objectionable though it might be that in the course of the case it would be necessary to refer to them; that must depend upon the course the trial took. Care must be taken to see that the police report was not given to the court until the decision was announced. The safe rule to apply was that on appeal against a summary conviction nothing should be placed before the appeal committee or the recorder which could not be given to a jury. Order of certiorari.

APPEARANCES: *J. Malcolm Milne* (*J. H. Milner & Son*, for *James Young*, Grimsby); *T. R. Fitzwalter Butler* (*Hyde, Mahon & Co.*, for *L. W. Heeler*, Grimsby; *Godfrey Warr & Co.*, for *John Barker*, Grimsby).

[Reported by Miss J. F. LAMB, Barrister-at-Law] [3 W.L.R. 563

SOLICITOR: TAXATION OF COSTS: ORAL AGREEMENT TO CHARGE LESS THAN AUTHORISED SCALE: ENFORCEABILITY

***In re* A Solicitor**

Pearson, J. 18th October, 1955

Appeal from Master Graham-Green.

The taxing master having taxed certain bills of costs relating to a number of conveyancing transactions carried out by a firm of solicitors on behalf of a client, the client objected to the taxation, alleging the existence of an oral agreement between the solicitors and himself to charge less than the authorised scale in some cases and nothing at all (save out-of-pocket expenses) in others. The taxing master, in his answer to the client's objections, said: "The client alleges that no written agreement is necessary in view of the *dictum* of the Court of Appeal in *Clare* v. *Joseph* [1907] 2 K.B. 369 (approving *Jennings* v. *Johnson* (1873, L.R. 8 C.P. 425). The case of *Clare* v. *Joseph* was decided by the Court of Appeal on the basis (i) that the common law made a distinction between agreements favourable to the client and those unfavourable (see also Cordery on Solicitors, 4th ed., p. 328); (ii) that the Legislature did not intend s. 4 of the Attorneys and Solicitors Act, 1870 (which required the agreement to be in writing), to apply to an agreement which was favourable to the client. It is contended by the client that s. 4 of the Attorneys and Solicitors Act, 1870, applied to both contentious and non-contentious business, and that it is for all intents and purposes similar to ss. 57 and 59 of the Solicitors Act, 1932. In fact: (i) the subject-matter of *Clare* v. *Joseph* and *Jennings* v. *Johnson* related solely to contentious business; (ii) at the date when the decision of the Court of Appeal in *Clare* v. *Joseph* was given the Legislature had separated contentious and non-contentious business so that at that date the Attorneys and Solicitors Act, 1870, applied solely to contentious business, and non-contentious costs were governed by s. 8 of the Solicitors' Remuneration Act, 1881; (iii) this separation of the two classes of business has been maintained in the Solicitors Act, 1932, which repeals the Attorneys and Solicitors Act, 1870, and the Solicitors' Remuneration Act, 1881, and adopts quite dissimilar wording in s. 57 for non-contentious to that in s. 59 for contentious matters. In my view, whilst s. 59 may permit a client to make an oral agreement favourable to himself, the wording of s. 57 is clear and requires of 'a solicitor and his client' who desire to make an agreement as to the remuneration of the solicitor in non-contentious business that the agreement shall be in writing and signed by the person to be bound thereby. For the above reasons I overrule the whole of these objections." The client appealed to Pearson, J., in chambers, who adjourned his judgment into open court.

PEARSON, J., said that there were two real or apparent anomalies or inequities which could be suggested if the contention on behalf of the firm, upholding the decision of the taxing master, was correct, namely: (1) in relation to contentious business the client can, but the solicitor cannot, rely upon an oral agreement; and (2) the client's right to rely upon an oral agreement exists only in relation to contentious business and not in relation to non-contentious business. His lordship, having reviewed the earlier legislation and authorities, said that the scheme under the Solicitors Act, 1932, was perfectly plain. Under s. 56 (7) the scale must be applied subject to the provisions of s. 57, and the meaning of subs. (3) of s. 57 was that an agreement between a solicitor and his client with regard to the amount of charges must be in writing in order to have the effect which was referred to in s. 57, i.e., in order to displace the scale. The scale in the present case under consideration was not displaced, because no agreement in writing was made. There remained s. 59 dealing with contentious business, with which he, his lordship, was not concerned. As this was merely a consolidating Act, and as the provisions of s. 59 and the following sections were rather similar to those of the Act of 1870, it might be that the decisions in *Jennings* v. *Johnson*

and *Clare* v. *Joseph* still held good, or there might be some argument to the contrary. Even though it might be right to say that those decisions still held good and that there were created the two anomalies or inequities, effect must be given to the plain words and the unmistakable meaning of the provisions of ss. 56 and 57. It followed, therefore, that he agreed with the master's answers and also with the reasons given by him, which were upheld on an examination of the relevant statutory provisions and decided cases. Appeal dismissed.

APPEARANCES: *Paul Curtis-Bennett; Leslie Wainstead.*

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[3 W.L.R. 549**

LICENSING: SUPPLY BY LICENSEE OF DRINK TO STAFF OF INN AFTER CLOSING TIME

Schofield *v.* Jones

Lord Goddard, C.J., Ormerod and Barry, JJ.

20th October, 1955

Case stated by a stipendary magistrate.

The licensee of an inn owned by a brewery company supplied members of the staff, who were employed by the company, with a drink after the inn had closed and they had tidied up the premises. In each case the drink was debited to the company. The supply of the drinks followed a general practice and was expected by the staff as an additional reward for their services. On a charge against the licensee of supplying intoxicating liquor after permitted hours, contrary to s. 100 (1) (*a*) of the Licensing Act, 1953, the licensee was convicted. He appealed.

LORD GODDARD, C.J., said that the appellant was not entertaining the staff as private friends; he was giving them a drink as servants because if he did not he would not be able to get the staff, and they expected it as part of their remuneration. Therefore it could not come within s. 100 (2) (*c*) of the Licensing Act, 1953, which enabled a licensee to supply intoxicating liquor to "any private friends of the holder of the licence bona fide entertained by him at his own expense." The magistrate was quite right in finding that this was not the entertainment of private friends; but the magistrate said: "The fact that drinks were debited to the brewery company did not prevent them being supplied at the expense of the appellant." He, his lordship, could not agree with that. It might be that he founded himself on *Jones* v. *Cockroft* [1945] 2 All E.R. 333, 335, where Humphreys, J., said: "I do not think the fact that the landlord said here 'As a matter of fact, I shall put down those drinks to the owners of the house afterwards,' means that it was not at his own expense. The words in the section 'at his own expense' are probably merely to emphasise that he must be the person who pays, not the people who get the drinks." With all respect to Humphreys, J., s. 100 (2) (*c*) provided that private friends must be entertained at the licensee's own expense. If the expense was falling on somebody else, it clearly did not fall on the licensee, it was not at the licensee's expense. For those reasons the magistrate came to a right decision, though on one point he, his lordship, differed from him.

ORMEROD, J., delivered an assenting judgment and BARRY, J., agreed. Appeal dismissed.

APPEARANCES: *Percy Lamb*, Q.C., and *R. H. Mais* (*Meredith, Hardy & Hutchison*, for *Bullock, Worthington & Jackson*, Manchester); *W. G. Morris* (*Sharpe, Pritchard & Co.*, for *P. B. Dingle*, Manchester).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[1 W.L.R. 1133**

COURT OF CRIMINAL APPEAL

CRIMINAL LAW: OBTAINING CREDIT BY FRAUD: STOLEN MOTOR-CYCLE TENDERED IN PART PAYMENT IN HIRE-PURCHASE TRANSACTION: APPROPRIATE SENTENCE

R. *v.* Mitchell

Lord Goddard, C.J., Ormerod and Gorman, JJ.

21st February, 1955

Appeal against sentence.

A young man who was buying a motor-cycle on hire-purchase, before completing the payments due, sold it, representing to the buyers that it was his own property and inducing them to let him have another motor-cycle on hire-purchase and to credit him with the sum of £65, the second-hand value of the first motor-cycle. He pleaded "guilty" at quarter sessions to both counts of an indictment charging him (1) with larceny of the first motor-cycle, and (2) obtaining credit by fraud other than false pretences contrary to s. 13 (1) of the Debtors Act, 1869. Sentences of three years' corrective training were imposed for each offence, the sentences to run concurrently. He applied for leave to appeal against sentence and his application was treated as an appeal.

LORD GODDARD, C.J., said that the offence charged in the first count was a bad one, and the court would not interfere with the conviction or sentence. Selling an article which was on hire-purchase was stealing, as it was not the property of the offender. There were two objections regarding the second count, on which a plea of guilty ought not to have been made or accepted. First, the recorder should not have passed that sentence, because under s. 13 (1) of the Debtors Act, 1869, the maximum sentence was only one year's imprisonment, and under the Criminal Justice Act, 1948, corrective training could only be awarded for an offence carrying a sentence of two years' imprisonment or more. Secondly, to obtain credit by fraud there must be a debt, and the appellant did not obtain credit for any sum. Whatever the offence might be, it was not obtaining credit by fraud or under false pretences. No doubt it might be said that he had been "credited" with a sum as if he had paid it, but under the Debtors Act there must be the actual creation of a debt. The second conviction must be quashed. Appeal allowed in part.

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 1125**

SURVEY OF THE WEEK

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

Administration of Justice Bill [H.L.] [27th October.

To amend the law relating to Admiralty jurisdiction, legal proceedings in connection with ships and aircraft and the arrest of ships and other property; to make further provision as to the appointment, tenure of office, powers and qualifications of certain judges and officers; to make certain other amendments of the law relating to the Supreme Court and the county courts and the law relating to the enforcement of certain judgments, orders, and decrees, and for purposes connected with the matters aforesaid.

Copyright Bill [H.L.] [26th October.

To make new provision in respect of copyright and related matters, in substitution for the provisions of the Copyright Act, 1911, and other enactments relating thereto; to amend the Registered Designs Act, 1949, with respect to designs related to artistic works in which copyright subsists and to amend the Musical Performers' Protection Act, 1925, and for purposes connected with the matters aforesaid.

Friendly Societies Bill [H.C.] [25th October.
London County Council (Loans) Bill [H.C.] [27th October.
Sudan (Special Payments) Bill [H.C.] [26th October.
Therapeutic Substances Bill [H.L.] [26th October.

To consolidate the Therapeutic Substances Act, 1925, and the Therapeutic Substances (Prevention of Misuse) Acts, 1947 to 1953.

Read Second Time:—

Aliens' Employment Bill [H.C.] [25th October.
Hillingdon Estate Bill [H.L.] [27th October.
Validation of Elections (No. 2) Bill [H.C.] [27th October.
Willoughby De Broke Estate Bill [H.L.] [27th October.

Read Third Time:—

Leeward Islands Bill [H.L.] [27th October.

In Committee:—

Food and Drugs Bill [H.L.] [25th October.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time :—

Expiring Laws Continuance Bill [H.C.] [27th October.

To continue certain expiring laws.

Post Office and Telegraph (Money) Bill [H.C.] [27th October.

To provide for raising further money for the development of the postal, telegraphic and telephonic systems and of any other business of the Post Office; to make provision with respect to the application of sums arising from the sale of property acquired for the purposes of the Post Office; and for purposes connected with the matters aforesaid.

Read Second Time :—

Blyth Generating Station (Ancillary Powers) Bill [H.L.] [25th October.

Diplomatic Immunities Restriction Bill [H.C.] [25th October.

Rural Water Supplies and Sewerage Bill [H.C.] [25th October.

B. Questions

Site Purchases (Payments to Central Land Board)

Mr. Deedes said that where local authorities had purchased land for housing, it was only fair, now that such authorities no longer had to pay a development charge to the Central Land Board, that they should repay to the Central Land Board money expended by the Board in extinguishing claims for loss of development value plus commuted interest retrospective to July, 1948. [25th October.

Requisitioned Premises

Mr. Duncan Sandys said it was most unlikely that there would be many cases in which an owner of a requisitioned house, who accepted the licensee as a tenant and received compensation for loss of the right to vacant possession, subsequently obtained vacant possession within five years on the local authority re-housing the tenant. The problem was at present a hypothetical one and he would prefer to wait until it arose. [25th October.

Common Land (Royal Commission)

The Prime Minister said that the Queen had approved the appointment of Sir William Ivor Jennings as Chairman of the Royal Commission which was to be set up to inquire into the law relating to common land in England and Wales. Its terms of reference were: "To recommend what changes, if any, are desirable in the law relating to common land in order to promote the benefit of those holding manorial and common rights, the enjoyment of the public, or, where at present little or no use is made of such land, its use for some other desirable purpose." An announcement as to membership would be made shortly. [25th October.

Hire-Purchase Legislation

Mr. Derek Walker-Smith said that the President of the Board of Trade was not yet satisfied that legislation was necessary to amend the Hire-Purchase Act, 1954, so that not only the cash price but the amount of the deposit, the number of instalments and the amount of each must be stated clearly on all postal and newspaper advertising. The matter was being considered in consultation with the trade associations concerned. [25th October.

Royal Commission on Divorce

The Attorney-General said that the Royal Commission on Divorce hoped to report before the beginning of next year, and the report would be published as soon as possible. [25th October.

Television Sets (Service Agreements)

Mr. Peter Thorneycroft said he had no power to prevent radio service agents using the word "insurance" when offering their agreements to the owners of television sets. In any case, prohibition of its use would not affect the competence of the firms to carry out their agreements. [27th October.

Homosexuality and Prostitution (Report)

Major Lloyd-George said the committee was likely to be occupied for at least another two months in hearing evidence, and he was not yet able to say when it would present its report. [27th October.

STATUTORY INSTRUMENTS

Bangor Water Order, 1955. (S.I. 1955 No. 1612.) 5d.

Census of Production (1956) (Returns and Exempted Persons) Order, 1955. (S.I. 1955 No. 1592.)

London Traffic (Prescribed Routes) (Esher, Surrey) Regulations, 1955. (S.I. 1955 No. 1600.)

Morley Water Order, 1955. (S.I. 1955 No. 1614.) 5d.

National Insurance (Contributions) Amendment Regulations, 1955. (S.I. 1955 No. 1602.) 6d.

Retention of Cables and Pipes under Highways (Norfolk) (No. 4) Order, 1955. (S.I. 1955 No. 1594.)

Shirtmaking Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1955. (S.I. 1955 No. 1611.) 5d.

South Essex Waterworks Order, 1955. (S.I. 1955 No. 1613.) 5d.

Stopping up of Highways (Bootle) (No. 1) Order, 1955. (S.I. 1955 No. 1609.)

Stopping up of Highways (Huntingdonshire) (No. 6) Order, 1955. (S.I. 1955 No. 1595.)

Stopping up of Highways (Kent) (No. 19) Order, 1955. (S.I. 1955 No. 1604.)

Stopping up of Highways (London) (No. 14) Order, 1955. (S.I. 1955 No. 1605.)

Stopping up of Highways (London) (No. 44) Order, 1955. (S.I. 1955 No. 1607.)

Stopping up of Highways (London) (No. 45) Order, 1955. (S.I. 1955 No. 1608.)

Stopping up of Highways (Northamptonshire) (No. 2) Order, 1955. (S.I. 1955 No. 1606.)

Stopping up of Highways (Wiltshire) (No. 3) Order, 1955. (S.I. 1955 No. 1610.)

Telephone Amendment (No. 1) Regulations, 1955. (S.I. 1955 No. 1622.) 1s. 2d.

Town and Country Planning (Local Authorities' Land: Exceptions to Section 79) (Revocation) (Scotland) Regulations, 1955. (S.I. 1955 No. 1599 (S. 137).)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, W.C.1. The price in each case, unless otherwise stated, is 4d. post free.]

OBITUARY

Mr. H. BELDON

Mr. Howard Beldon, solicitor, of Bradford, died on 28th October. He was admitted in 1915.

Mr. S. G. BRADSHAW

Mr. Stanley Goodwin Bradshaw, solicitor, of Finsbury Square, London, E.C.2, died on 26th October, aged 66. He was admitted in 1913.

Mr. J. A. BRIERLEY

Mr. John Arnold Brierley, solicitor, of Oldham, died on 18th October, aged 71. He was admitted in 1906, and in 1942 became the president of the Oldham Chamber of Commerce.

Mr. E. H. CLEGG

Mr. Ernest Horatio Clegg, solicitor, of Brighouse, died on 28th October, aged 67. He had been Clerk to the Brighouse Magistrates for twenty-eight years, and prior to his resignation in 1947 he had been Town Clerk of Brighouse for over twenty years. He was admitted in 1923.

Sir STEPHEN LOW

Sir Stephen Philpot Low, formerly solicitor to the Board of Trade, and director and editor of the Statutory Publications Office since 1950, died on 25th October, aged 72. He was called by the Middle Temple in 1906 and knighted in 1938.

POINTS IN PRACTICE

Income Tax, Schedule A—New Owner—Calculation of Maintenance Relief

Q. A taxpayer purchased a house in 1950 and no evidence was available of previous expenditure on maintenance and repairs. The Sched. A value of the property is £31 and claims for maintenance relief were made as follows :—

Year of outlay	1950/51	.. ..	Nil.
	1951/52	.. ..	£131 .
	1952/53	.. ..	Nil.
	1953/54	.. ..	£80.
	1954/55	.. ..	£16.

All the claims were calculated by the tax office on the basis of the average of the last five years and not as we understood the practice to be—" on the actual expenditure with an adjustment at the end of the first five years." The result is that for the tax year 1952/53 the relief allowed was only one-fifth of £131, which is less than the net annual value. Now that five years have elapsed the tax office has been asked to adjust the maintenance claim for the last five years, but they have replied that as the repayments have always been made on the average of the past five years' basis no further adjustment is necessary. Is this correct ?

A. It is far from clear from the Income Tax Act, 1952, s. 101, whether, as a matter of law, the expenditure of a predecessor in title can be included in computing the five-year average. The Commissioners of Inland Revenue contend that it cannot, so that, strictly, one would have to start as it were with a nil figure for the first four years, and that seems to have been the procedure adopted here. But there is a published extra-statutory concession (No. 5 of those in force at 31st December, 1949) (Cmd. 8103) which provides that : " Where a new owner is unable to obtain details of previous owners' maintenance expenditure a claim is admitted on a basis of his actual expenditure in the year of claim (provided that the expenditure is not exceptionally heavy) until a five-years' average is available if the claimant undertakes to accept the actual years' basis for five complete years." It seems to us that this concessional treatment has not been claimed in this case or it may be that it has been claimed and refused on the grounds that the 1951/52 expenditure is exceptionally heavy. If it be the case that it has not been claimed, possibly through ignorance, the taxpayer ought to ask that it be now applied and the claim adjusted accordingly. If H.M. inspector refuses the matter can be referred to Somerset House, but if they also refuse there is no machinery for enforcing the application of what is in fact a concession.

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the " Points in Practice " Department, The Solicitors' Journal, 21 Red Lion Street, London, W.C.1.

They should be **brief, typewritten in duplicate,** and accompanied by the name and address of the sender **on a separate sheet,** together with a **stamped addressed envelope.** Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

Public Health—Connection of Private with Public Sewer —Notification of Frontagers

Q. A contemplates building a house on Blackacre, a field situate on a private street 100 feet long which leads out of a public street. The public street is served with a single sewer up to the junction with the private street. *A* plans to run his private sewer from Blackacre along the the private street into the public sewer. Is it necessary or proper to obtain the consent of any frontagers to the private street before such work should be commenced ? Section 37 of the Public Health Act, 1925, refers, but was repealed by s. 346 of the Public Health Act, 1936, and not re-enacted. Section 34 of the Public Health Act, 1936, would appear to have an indirect bearing.

A. A landowner has a right to break open a street for the purpose of causing his drains to communicate with a public sewer (Public Health Act, 1936, s. 34 (2)), and a street for this purpose includes one which is not repairable by the inhabitants at large (see definition in s. 343 (1) of the Act). The " managers " of the street (i.e., the frontagers, unless the street has been declared to be a prospectively maintainable highway, in which case they will be the local highway authority) must be notified in accordance with the provisions of the Public Utilities Street Works Act, 1950.

Cheque—Amount Expressed Three Times in Figures but Not in Words—Validity

Q. A cheque was drawn payable to solicitors in which the amount (instead of being expressed once in words and once in figures) was written three times in figures. Bearing in mind the provisions of s. 3 of the Bills of Exchange Act, 1882, that the amount must be " a sum certain in money " the solicitors advised that the cheque was valid, but the bank have refused to pay it, saying that the amount must be expressed in words. Who is right ?

A. The latest (21st) edition of Byles on Bills, citing " Questions on Banking Practice " (1952) Nos. 477, 480 and 481, says that a cheque would not usually be paid if the amount was in figures only. It must be remembered that a banker's obligation to honour his customers' cheques is, to quote Paget's Law of Banking, " circumscribed by certain necessary conditions," one of which is that the cheque shall be regular and unambiguous in form. To state a sum three times in figures strikes us as quite likely to result in ambiguity (though the question does not state where the figures occur) and to omit the universal practice of writing it in words puts s. 9 (2) of the Bills of Exchange Act out of the picture. We would not be inclined to challenge the bank's refusal from what we are told of the present case.

NOTES AND NEWS

Honours and Appointments

The Queen has been pleased to approve the appointment of Mr. Samuel James Havard Evans to be Deputy Chairman of the Court of Quarter Sessions for the County of Carmarthen.

The Queen has been pleased to approve the appointment of His Honour Judge Norman Alexander Carr to be Deputy Chairman of the Court of Quarter Sessions for the County of Northampton.

Wills and Bequests

Mr. Gerald James George Botteley, solicitor, of Birmingham, left £39,882 (£38,617 net).

Mr. Wilson Butler, solicitor, of Broughton-in-Furness, Lancs, left £41,371 (£41,194 net).

Mr. William Stuart Rollo, solicitor, of Liverpool, left £30,511 (£29,632 net).

SOCIETIES

At the annual meeting of the Huddersfield Incorporated Law Society on 26th October the following officers were elected for the ensuing year : president, Mr. T. A. S. Drake ; vice-president, Mr. O. C. Somerville-Jones ; hon. treasurer, Mr. J. Ashton Sykes ; hon. secretaries, Messrs. F. Mills and D. G. Berry.

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